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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 210.

ALEXANDER G. BOWDITCH, ASSIGNEE OF THE ESTATE OF CHARLES H. HALL, A BANKRUPT, PLAINTIFF IN ERROR,

vs.

THE CITY OF BOSTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 3, 1877.

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INDEX.

	Original.	Print.
Writ of error to circuit court	1	1
Return of circuit court thereon	2	1
Citation and acknowledgment of service thereof	3	1
Writ of error to district court	6	2
Return of district court thereon	7	3
Record of district court	8	3
Answer in district court	13	7
Plaintiff's exceptions in district court	13	7
Certificate of clerk of district court to record, &c	14	8
Testimony of William Gaston	15	8
John S. Damrell	22	13
H. W. Benham	34	21
William Woolley	39	24
George O. Carpenter	42	27
Edward Atkinson	48	31
G. A. Ordway	51	33
John M. French	67	44
John H. Coffin	70	46
Rufus Brown	71	47
Charles Brown	75	49
G. A. Ordway, recalled	77	51
William L. Burt	78	52
Charles H. Hall	80	53
Russell H. Connell	94	62
Sidney Fisher	99	66
William L. Burt, resumed	101	67
Edward Spellman	110	74
Record of judgment of circuit court	112	75
Opinion of circuit court	114	75
Certificate of clerk of circuit court to record, &c	122	70
Copy of bond to party on writ of error	124	80

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, greeting

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Alexander G. Bowditch, of Boston, in the district of Massachusetts, assignee of the estate of Charles H. Hall, bankrupt, plaintiff, and the City of Boston, a municipal corporation duly established by law in said district, defendant, in an action of tort, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the first day of November, in the year of our Lord one thousand eight hundred and seventy-six.

JOHN G. STETSON,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—

NATHAN CLIFFORD,
Associate Jus. Sup. Court U. S.

2 Circuit court of the United States.

DISTRICT OF MASSACHUSETTS, *ss:*

And now here, the judges of the circuit court of the United States, in and for the district of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States, in and for the district of Massachusetts, have hereto set my hand and the seal of said court this thirtieth day of November, A. D. 1876.

[SEAL] JOHN G. STETSON, *Clerk.*

3 The United States of America to the City of Boston, a municipal corporation duly established by law in the district of Massachusetts, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's

office of the circuit court of the United States within and for the district of Massachusetts, wherein Alexander G. Bowditch, of said Boston, assignee of the estate of Clarles H. Hall, bankrupt, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Nathan Clifford, associate justice of the Supreme Court of the United States, this first day of November, in the year of our Lord one thousand eight hundred and seventy-six.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

Sufficient service of this citation is acknowledged.

J. P. HEALY,
City Solicitor, for Def't in Error.

4 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-six, before the honorable Nathan Clifford, associate justice.

ALEXANDER G. BOWDITCH, AS HE IS ASSIGNEE of the estate of Charles H. Hall, bankrupt, of Boston, in said district, plaintiff in error,
v.
THE CITY OF BOSTON, A MUNICIPAL CORPORATION duly established by law, in said district, defendant in error.

Upon the complaint of Alexander G. Bowditch, assignee as aforesaid, a writ of error was issued in the words following, namely:

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the district of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Alexander G. Bowditch, as he is assignee of the estate of Charles H. Hall, bankrupt, of Boston, in said district, plaintiff, and The City of Boston, a municipal corporation duly established by law in said district, defendant, in an action of tort, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States within and for said district, together with this writ, so that you have the same before said circuit court at Boston, on the fifteenth day of October next, that, the record and proceedings aforesaid

being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the eighth day of July, in the year of Lord one thousand eight hundred and seventy-five.

[SEAL OF CIRCUIT COURT, MASSACHUSETTS.] JOHN G. STETSON,
Clerk of the Circuit Court of the United States, District of Massachusetts.

Allowed by—

JOHN LOWELL,
Judge.

7 Whereupon the judge of the district court made return of this writ as follows, namely:

District court of the United States.

DISTRICT OF MASSACHUSETTS, *ss:*

And now here, the judge of the district court of the United States in and for the district of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the circuit court of the United States, as within commanded.

In testimony whereof I, Elisha Bassett, deputy clerk of said district court of the United States, in and for the district of Massachusetts, have hereto set my hand and the seal of said court this tenth day of July, A. D. 1875.

[SEAL OF THE DISTRICT COURT OF MASS.] ELISHA BASSETT,
Deputy Clerk.

8 RECORD OF DISTRICT COURT.

UNITED STATES OF AMERICA,
Massachusetts District, ss:

At the district court of the United States, begun and holden at Boston, within and for the district of Massachusetts, on the fourth Tuesday (being the twenty-second day) of June, in the year of our Lord one thousand eight hundred and seventy-five, before the Hon. John Lowell, judge.

ALEXANDER G. BOWDITCH, AS HE IS ASSIGNEE of the estate of Charles H. Hall, bankrupt, of Boston, in said district, plaintiff,
against
THE CITY OF BOSTON, A MUNICIPAL CORPORATION duly established by law, in the district of Massachusetts, defendant in an action of tort.

1ST COUNT.—The plaintiff says he is the assignee in bankruptcy of the estate of C. H. Hall and Charles Armstrong, formerly copartners, doing business in Boston under the firm-name and style of Armstrong and Company. And the plaintiff says, that on the night of November 9th and 10th, A. D. 1872, the said bankrupts were lessees and occupants

of premises at No. 57 Milk street, in Boston, corner of said Milk street and Devonshire street, so called; that said Armstrong and Company were lithographers, and were owners of a large stock of merchandise and fixtures, machinery and tools, situate in said premises, of the value of sixty thousand dollars, and the lease of said premises for ten years thereafter, valued at ten thousand dollars. And at the date aforesaid a great fire occurred, which did not first break out in said building or premises, and the same was raging in said city, from which said building and other buildings in its vicinity were in danger, and the mayor and aldermen present on said occasion, in the vicinity of said building, and present in a place in immediate danger from said fire, directed said building, which included the portion leased as aforesaid, and
9 containing said goods, machinery, &c., to be demolished, having adjudged the same to be necessary in order to prevent the spreading of the said fire. And the plaintiff says said building was thereupon demolished and blown up, by reason of said order, and the same was the means of stopping the fire. And said goods, machinery, &c., were destroyed by reason of said demolition, and said lease became of no use, and the premises unfit for occupancy. And the plaintiff is entitled to recover reasonable compensation therefor, and the defendants owe him the sum of seventy thousand dollars.

2D COUNT.—The plaintiff says he is assignee in bankruptcy of the estate of C. H. Hall and Charles Armstrong, formerly copartners, doing business in Boston under the name and style of Armstrong and Company. And the plaintiff says that on the night of November 9th and 10th, A. D. 1872, the said bankrupts were lessees and occupants of premises at number 57 Milk street, in Boston, corner of said Milk street and Devonshire street, so called; that said Armstrong and Company were lithographers and owners of a large stock of merchandise and fixtures, machinery and tools, situate in said premises, of the value of sixty thousand dollars, and the lease of said premises for ten years, valued at ten thousand dollars; and at the date aforesaid a great fire occurred, which did not first break out in said building or premises, and the same was raging in said city, from which said building and other buildings in its vicinity were in danger, and three of the firewards of said city, present at a place in immediate danger from said fire and in the vicinity of said building on said occasion, directed said building, which included the portion thereof leased as aforesaid, and containing said goods, machinery, &c., to be demolished, having adjudged the same to be necessary, in order to prevent the spreading of the said fire. And the plaintiff says the said building was thereupon demolished and blown up by reason of the said order, and the same was the means of stopping the said fire; and said goods, machinery, &c., were destroyed by reason of said demolition, and said lease became of no use, and the premises unfit for occupancy. And the plaintiff is entitled to recover reasonable compensation therefor, and the defendants owe him the sum of seventy thousand dollars.

3D COUNT.—The plaintiff says he is assignee in bankruptcy of the estate of C. H. Hall and Charles Armstrong, formerly copartners, doing business in Boston under the name and style of Armstrong and Company; that on the night of November 9th and 10th, A. D. 1872, the said bankrupts were lessees and occupants of premises at 57 Milk
10 street, in Boston, corner of said Milk street and Devonshire street, so called; that said Armstrong and Company were lithographers, and were owners of a large stock of merchandise, fixtures, machinery and tools, situate in said premises, of the value of sixty

thousand dollars, and the lease of said premises for ten years, valued at ten thousand dollars. And at the date aforesaid a great fire occurred, which did not first break out in said building or premises, and the same was raging in said city, from which said building and other buildings in its vicinity were in danger, and two of the civil officers present on said occasion in the vicinity of said buildings, and present in a place in said city in immediate danger from said fire, directed said building, which included the portion thereof leased as aforesaid, and containing said goods, machinery, etc., to be demolished, having adjudged the same to be necessary in order to prevent the spreading of the said fire. And the plaintiff says said building was thereupon demolished and blown up by reason of said order, and the same was the means of stopping the fire; and said goods, machinery, etc., were destroyed by reason of said demolition, and said lease became of no use, and the premises unfit for occupancy. And the plaintiff is entitled to recover reasonable compensation therefor, and the defendants owe him the sum of seventy thousand dollars.

4TH COUNT.—The plaintiff says he is assignee in bankruptcy of the estate of C. H. Hall and Charles Armstrong, formerly copartners doing business in Boston, under the name and style of Armstrong and Company; that on the night of November 9th and 10th, A. D. 1872, the said bankrupts were lessees and occupants of premises at number 57 Milk street, in Boston, corner of said Milk street and Devonshire street, so called; that said Armstrong and Company were lithographers and owners of a large stock of merchandise, fixtures, machinery, and tools, situate in said premises, of the value of sixty thousand dollars, and the lease of said premises for ten years, valued at ten thousand dollars. And at the date aforesaid a great fire, which did not break out first in said building or premises, was raging in said city, from which said building and other buildings in its vicinity were in danger, and two of the chief military officers of the place, present on said occasion in the vicinity of said buildings, and present in a place in said city in immediate danger from said fire, directed said building, which included the portion thereof leased as aforesaid, and containing said goods, machinery, etc., to be demolished, having adjudged the same to be necessary in order to prevent the spreading of the said fire. And the plaintiff says said building was thereupon demolished and blown up
11 by reason of said order, and the same was the means of stopping the fire. And said goods, machinery, etc., were destroyed by reason of said demolition, and said lease became of no use, and the premises unfit for occupancy. And the plaintiff is entitled to recover reasonable compensation therefor, and the defendants owe the plaintiff the sum of seventy thousand dollars.

5TH COUNT.—And the plaintiff says that he is assignee in bankruptcy of the estate of C. H. Hall and Charles Armstrong, formerly copartners, doing business in Boston under the name and style of Armstrong and Company; that said Armstrong and Company, on the 9th and 10th of November, A. D. 1872, were lessees and occupants of premises at 57 Milk street, in Boston, their lease being from ten years from said date, of the value of ten thousand dollars, and their personal property in said premises being of the value of sixty thousand dollars, and on said date a great fire was raging in said city, which did not break out in said premises or building, so that it became necessary for the public safety that said property should be taken possession of by the lawful authorities of said city and demolished to prevent the spread of the fire; and said property was so taken by the proper authorities and ap-

propriated to the public uses aforesaid for the benefit of the public, and was demolished by said authorities, and was the means of preventing the spread of the said fire. And the plaintiff is entitled to recover a reasonable compensation of the defendant therefor, and the plaintiff alleges the value of the property so taken to be seventy thousand dollars.

6TH COUNT.—And the plaintiff says that he is the assignee in bankruptcy of the estate of C. H. Hall and Charles Armstrong, formerly copartners, doing business in Boston, under the firm-name and style of Armstrong and Company; that on the night of November 9th and 10th the said bankrupts were lessees and occupants of premises at number 57 Milk street, corner of said street and Devonshire street, so called; that said bankrupts were lithographers, and owners of a large stock of merchandise, fixturers, machinery and tools, situate in said premises, of the value of sixty thousand dollars, and of the lease of said premises for ten years, valued at ten thousand dollars; that at the date aforesaid a great fire, which did not first break out in said building, was raging in said city, from which said building and other buildings in its vicinity were in danger; that the said bankrupts took ample time and provided ample means for removing their said goods from said premises to a place of safety, and would have so done, but a large number of persons, exceeding twelve in number, tumultuously assembled in said city near said store, prevented the said bankrupts from so removing their said goods, and blew up and demolished said building, including the portion thereof so leased, and injured the said goods and merchandise, machinery, &c., to their full value, and rendered the said lease of no use and the premises unfit for occupancy, all of which was done by said persons so tumultuously assembled in said city where said goods and machinery, &c., were situated, and the said bankrupts used all reasonable diligence to prevent said destruction and injury, and to procure the conviction of the offenders, and the defendants are bound to indemnify the plaintiff to the amount of three-fourths of the value of the said goods destroyed, of the lease so rendered useless, and that the defendants owe the plaintiff the amount of the injury so sustained, to the damage of the said plaintiff (as he says) the sum of one hundred thousand dollars.

On the foregoing writ the marshall made return as follows, viz:

UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *February 25th*, 1874.

Pursuant hereunto, I have this day, at o'clock and minutes m., attached a chip as the property of the within-named defendant, and afterwards, on the same day, I summoned it to appear at court, as within directed, by giving in hand to S. C. Cobb, as he is mayor of within-named city of Boston, a true and attested copy of this precept, and also a like copy in hand to F. W. Tracy, as he is treasurer of said Boston.

ROLAND G. USHER,
U. S. Marshall.

This action was entered at the June term of this court, A. D. 1874, when, on the 18th day of July, A. D. 1874, the following answer was filed in court, viz:

13 *Answer.*

In the district court of the United States, within and for the district of Massachusetts.

ALEXANDER G. BOWDITCH, ASSIGNEE IN BANKRUPTCY,
vs.
CITY OF BOSTON.

And now comes The City of Boston, and for answer denies each and every allegation in the plaintiff's writ and declaration, and each and every count of said declaration.

By J. P. HEALY, *its Attorney.*

From said June term, A. D. 1874, this action was continued from term to term to the March term of this court, A. D. 1875, when, on the fourth day of May, A. D. 1875, issue being thus joined, this action was, after a full hearing, committed to a jury, sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein, and upon oath say that they find for the defendants.

From the said March term, A. D. 1875, this action was continued to this present term; and now, on this seventh day of July, A. D. 1875, it is considered by the court that the said plaintiff take nothing by his said writ, and that said defendant recover costs of suit taxed at .

Upon the trial of said cause, and before the jury left the bar, the plaintiff claimed certain exceptions, and the same, having been reduced to writing, have been allowed by the court and ordered to be filed as of the day of the verdict and before the jury left the bar, which said exceptions are as follows, viz:

Plaintiff's exceptions.

Be it remembered, that this cause came on to be heard at the March term, A. D. 1875, before J. Lowell and a jury.

A copy of the pleadings is made part of this report, though no question is made as to sufficiency of the pleadings or the form of the action.

The evidence of the plaintiff, which is herein fully reported, being all in, the defendants requested the presiding judge to rule that the action could not be maintained, and the court accordingly ruled that
14 the evidence, with all the legitimate inferences which the jury might draw from it, was not sufficient to found a verdict upon for the plaintiff, and a verdict was directed for the defendants; to which the plaintiff excepts and prays that his exceptions may be allowed. There was no question made of the regularity of the bankruptcy proceedings of Charles H. Hall or of the plaintiff's appointment as assignee. It also appeared that there are no firewards appointed in Boston, but the engineers have all the power of firewards. The ordinances of the defendants may be referred to.

GEORGE W. MORSE,
Att'y for Plaintiff.

H. W. PUTNAM,
Ass't City Solicitor, for Def't.

The foregoing exceptions are allowed as of the day of the verdict and before the jury had left the bar.

JOHN LOWELL,
District Judge.

I, Elisha Bassett, deputy clerk of the district court of the United States for the district of Massachusetts, hereby certify that the foregoing is a true copy of the record and proceedings in the said suit, with all things concerning the same.

In witness whereof I have hereunto subscribed my name and affixed the seal of the said court this tenth day of July, A. D. 1875.

[L. S.] ELISHA BASSETT,
Deputy Clerk.

15 EVIDENCE FOR PLAINTIFF.

The following is the evidence used in the circuit court as the evidence of the plaintiff, referred to in the plaintiff's exceptions, as therein fully reported, namely:

BOWDITCH
vs.
CITY OF BOSTON.

Testimony of William Gaston.

Q. (By Mr. ALLEN.) You were mayor of the city of Boston at the time of the great fire of November, 1872?

A. I was.

Q. At what time did you learn of the fire breaking out?

A. I was at Roxbury. My impression is it was between half past nine and ten, although I am not certain about the hour when I learned it was a large fire. I heard the alarm, of course.

Q. After learning that, what did you do?

A. I went to the station-house, I think of Station 10, and found out what I could about it. Then I took the next train over the Providence R. R.

Q. And then?

A. I went from there to the fire.

Q. Where was the fire burning at that time?

A. It extended over quite a number of streets. I think I came down into Washington street, and thence down Essex and into various streets—Pearl, High, Broad, Federal, and Milk streets?

Q. Did you give any directions during the time you were visiting and viewing the fire?

(Objected to and withdrawn.)

Q. Were there any firewards at the time in the city of Boston?

A. There was an engineer and assistants; no officers bearing the name of firewards. (After discussion by the counsel, his honor stated that he should rule that to render the city liable, the orders for the destruction of buildings must be given by three of the engineers; it be-
16 ing agreed by both sides that there were engineers duly appointed. To which ruling the plaintiffs excepted.)

Q. During your visit and examination of the fire, state whether you saw any engineers of the city?

A. The first time I might or might not. I did at a subsequent time see the chief.

Q. The subsequent time was after your visit to the city hall?

A. Yes, sir.

Q. During your first examination of the fire, you are not able to state whether you saw any or not?

A. I very likely did see them, but I cannot recollect now. I probably did.

Q. But you are not certain?

A. No, sir; nor who they were, or where they were stationed, nor how many.

Q. I understand you to say after your first visit to the fire you went to the city hall?

A. I did.

Q. Can you tell about what time you reached there?

A. Only by conjecture. I should think probably between eleven and half past.

Q. Who did you find there?

A. I don't remember. I probably found some one in the police office. I very soon met Alderman Jenks, and we went to my office.

Q. How long did you remain in the mayor's office?

A. I remained a short time. Then we went up on top of the building with a view of getting a better view of the fire.

Q. Did you return to the mayor's office, and how long did you remain there?

A. I cannot tell, because I did not watch the progess of time, but not a great while. I then went with Alderman Jenks and found the chief engineer, and at that time I saw other gentlemen.

Q. At the city hall?

A. At the fire. I think it was in Federal street, or in that vicinity.

Q. Will you state what you saw at the fire when you went with Alderman Jenks and other gentlemen to Federal street, where you saw it; what condition of things were existing?

A. In what respect?

17 Q. Generally.

A. There was a very great fire. There were large multitudes in ths treets trying to save property and trying to extinguish the fire.

Q. Were the streets crowded?

A. The streets were crowded.

Q. That must have been about what hour?

A. I could not tell you, because I did not watch the progress of time.

Q. Was it as late as two o'clock?

A. I should think it was earlier than that.

Q. At this visit did you see any engineers other than the chief who went with you?

A. Yes, sir.

Q. Who?

A. That I can't tell you, but I know he went into a building, and the chief was there and some of the engineers, what ones I cannot state.

Q. Can you tell how many?

A. No, sir; I should think three or four.

Q. Besides the chief?

A. Yes, sir.

Q. State, if you please, what was done there by the engineers in respect to the fire in your presence, if anything.

A. There was some question as to the use of powder.

Q. What, if anything, was done in regard to that question—said or done?

A. I talked mainly with the chief. He told me he had already sent persons round to look at some of the points. The question arose whether or not it was wise to use gunpowder; and I am rather inclined to think the impression then was it should be used.

Q. Was any order given in your presence?

A. No, sir; not that I remember.

Q. Was any order given by any three of the engineers in your presence that night about using gunpowder?

(Objected to and admitted.)

Q. Did you at any time during that night hear any three or more engineers give directions to destroy any building in the city by gunpowder, or any buildings in which this was included?

A. My impression is the conversation I had was rather in the nature of a consultation than in the shape of any order. It was talk
18 about the policy; I don't know that any order—I don't recollect that any order was given to blow up any building or any street; but it was a mere question whether the flames had reached such a stage that it would be proper to use gunpowder. That was rather the form of the talk.

Q. Can you state whether any conclusion was arrived at in your presence?

A. I understood it was their intention to use gunpowder.

Q. Was there any particular location specified in your presence where that gunpowder was to be used?

A. Not to my recollection; not anything of the kind.

Q. At any time during the night of November 9th and 10th?

A. You mean in the presence of the engineers?

Q. Yes, sir.

A. No, sir.

Q. How long did you remain in the vicinity of Federal street?

A. That I cannot state; I was there not long when I received a request to go to city hall.

Q. You did so?

A. I did so.

Q. Can you state about what time you reached the city hall this time?

A. No, sir; I could not; I should be unable to say.

Q. Was it before or after three o'clock in the morning?

A. I should think it was before.

Q. How long did you remain in the city hall this time?

A. I remained practically four days and four nights; I believe I went out a few rods to get my meals.

Q. You remained there during the rest of the night?

A. Yes, sir. On Sunday I went out and went down to Congress Square; but with that exception I was in the city hall.

Q. State whether anything took place in the city hall in your presence among any citizens of the city in regard to blowing up buildings; citizens who were not engineers—after you went back the last time as you have related.

(Objected to and admitted.)

Q. After you returned to your office from Federal street, where you say you had met the several engineers who were in consultation—after you returned to the mayor's office, will you state whether any persons

in your presence talked over the matter of blowing up buildings with gunpowder?

19 A. Yes, sir.

Q. Who were they?

A. I could not state them all.

Q. State some of them.

A. General Burt was there; Mr. Allen was there; Mr. Shepard. I don't known as these were there all the time. I think Dr. Jenks was there. There were so many in and out, I cannot remember.

Q. Mr. Carpenter?

A. I don't know whether he was there or not.

Q. Mr. Atkinson?

A. He was in and out; whether he was in at that time I don't know.

Q. What was said in your presence by those persons and others in relation to the use of gunpowder in blowing up buildings that night?

A. I cannot give in detail the conversation, because it was very hurried and excited.

Q. The substance of it.

A. They came in there—they were citizens, most of whom I knew—in a state of alarm that the whole city would burn down. The flames were then raging with very great violence, and of course we were all impressed with the feeling of the calamity which was then impending over the city; and the question arose whether it had not arrived at a point of time when some expedient beyond water should be used to arrest the progress of the flames. Several of the gentlemen there thought powder should be used.

Q. And so expressed themselves?

A. Yes, sir. The chief engineer came in; he was sent for, I believe, by somebody, and he came in, and there was conversation, and he gave to certain gentlemen authority in uniting to blow up buildings. The language of those papers I cannot recall.

Q. Were there other engineers present besides the chief?

A. Not to my recollection.

Q. Can you state whether this authority was general, or to blow up particular buildings?

A. I can only state from impression.

Q. Do you know by whom those papers were signed?

A. The chief enginer.

Q. Only?

A. That is my impression. I don't think I read a single one of

20 them. I can only give you my impression about them. I understood them to be an authority to exercise their discretion in the use of gunpowder—not confined to any locality, to my knowledge; but I doubt whether I read one of the papers.

Q. From what was said at the time, whether the discretion was as to using powder at all, or as to what buildings to use it upon or in, or both?

A. My impression was it was the power to use gunpowder according to their discretion. I may be wrong, but that is my best recollection. I ought to say that I don't think I read one of the papers myself.

Q. Did you hear them read?

A. That I can't say.

(It was agreed that the following order, from page 303 of the "Report of the commissioners appointed to investigate the cause and management of the great fire in Boston," should be put in:)

"Col. Shepard will blow up buildings, or remove goods, as his judgment directs.

(Signed) "J. S. DAMRELL,
Chief Engineer."

Q. Did you during that morning, yourself, give any directions as to blowing up buildings, or any authority?

A. Not to my recollection.

Q. Did you authorize any person to authorize others to do it? Whether you gave any authority to any person to blow up buildings or authorize any other person to blow them?

(Objected to; and the court instructed Mr. Allen to "put them separately.")

Q. Whether you gave authority to any one to blow up buildings that night?

A. I have no recollection of it.

Q. Did you authorize any other person to authorize the blowing up of buildings?

(Objected to and allowed.)

Q. Did you authorize any persons to authorize others to blow up buildings?

A. I have no recollection of it. I had a large number of conversations, and I repeatedly said to gentlemen who desired authority
21 and directions from me to blow up buildings, I repeatedly during the night and day told them I hadn't the authority. I knew or thought I knew what the law was; and I told them it required three engineers; that I had not the authority and could not give it. I have no recollection of all the conversations I had; I cannot give the details of them, but I have no recollection of giving anybody any authority.

Q. Did you have a conversation with General Benham?

A. Yes, sir; he was there several times.

Q. Can you state whether you gave him any authority to act that night?

A. Not that I am aware of.

Q. State whether there was any military upon the spot at this time. I am now confining my inquiries to about 3 or 4 o'clock.

A. I had not at that time asked for any.

Q. At what time did you first know of or request the presence of any military force?

A. It might have been three or four o'clock in the morning.

Q. Of whom did you make the request; for whom to issue the order?

A. I think the first—I cannot say which was the first; I think I sent to the adjutant-general of the commonwealth. I also sent to the navy-yard.

Q. They arrived very early Sunday morning?

A. The navy yard troops came very early. The others I don't know. I didn't see them myself. I cannot from knowledge state what time they came. The State responded very promptly.

Q. Did you receive other troops from the forts in the harbor?

A. I think there were some; but I didn't see them.

Q. When Mr. Damrell issued this order which has been referred to, about how many persons were present there to your best recollection; whether quite a number?

A. Quite a number.

Q. A dozen or more in all?

A. I should think there were.

Q. By daylight there were troops in various positions; and during the next two or three days will you state whether there were troops in the city?

A. I think there were troops here, if my memory is correct, over a fortnight.

Q. Doing police duty and preserving order in the city?

22 A. Yes, sir; I kept them a good while after I thought their presence was necessary, because the apprehension of people were very much excited, and I thought it would tend to allay them if they knew a military force was here, and the State were very kind and gave me all the service in that direction I desired.

Q. A large number of troops were on duty in the city during that Sunday and many days succeeding?

A. Yes, sir.

Q. Some thousands?

A. My impression is I heard—I don't know personally—but at one time something over 2,000. I don't think that number remained a great while.

Q. You have no personal knowledge of the destruction of the particular building involved in this suit?

A. No, sir.

Cross-examination:

Q. (By Mr. HEALEY.) What was the character of this meeting in your office; was it a riotous meeting or what?

A. No, sir; in my judgment the farthest from it possible.

Q. Was there anything said having any tendency to show a disposition for the wanton destruction of property?

A. No, sir. My feeling was at that time that they felt as I did, that a terrible calamity was impending over the city. The city was burning down, and they came as citizens to do all in their power to arrest the progress of the flames, and that their sole purpose was the preservation of the city.

Q. And the consultation was in regard to the best means of effecting that end?

A. Yes, sir. I believed them all, from their conduct and bearing, to be actuated by the highest motives for the preservation of the public safety.

Testimony of John S. Damrell.

Q. (By Mr. ALLEN.) You were chief engineer of the city of Boston in November, 1872?

A. I was.

Q. Recollect the breaking out of the fire on Saturday night?

A. I do, well.

Q. At about what time?

A. Between seven and thirty minutes past.

Q. Where were you at the time?

23 A. Temple street.

Q. What did you do immediately after the alarm sounded?

A. Hastened to the scene of the conflagration.

Q. What did you find there?

A. I found on my arrival six buildings, one of them entirely consumed on the inside, and the other five on fire.

Q. How long did you remain there?

A. Where?

Q. Near the fire.

A. I remained near the fire probably about seven minutes.

Q. And then you went——

A. To different points, as the exigency of the case might require.

Q. How long a period did you spend investigating the locality of the fire?

A. At first about seven minutes, as near as my judgment would allow me to say.

Q. Then, as you passed round it and examined the locality, how long were you in that investigation?

A. As I passed round I took in the situation at a glance and took the necessary steps to send for aid out of town. As the apparatus at my command at that time was well employed under competent direction, that was the only labor left for me to perform—to secure assistance.

Q. You did send for assistance in all directions?

A. Yes, sir. After that the next point was to send a messenger to meet Engine 8 and locate her in Winthrop Square; to cause her to be placed in the square and form a battery there in conjunction with the apparatus from Charlestown and Cambridge.

Q. And then?

A. I went to High street.

Q. What did you do there?

A. I ascertained that the fire was burning in that vicinity. I sent a messenger to inform Captain Brown to locate such apparatus as might come from the Dorchester district to protect that section as far as possible from the fire spreading southward.

Q. What did you do next?

A. That would be impossible for me to state just what I did.

Q. Your best recollection after you went to High street.

24 A. I repaired to Winthrop Square, as near as I can fix it, and met there the engineer from Charlestown, or the assistant engineer, and one of the former engineers, then serving in the capacity of surveyor and inspector of buildings, and asked him to aid and assist—as that at that time was the key of the fire—in stopping it from entering the Cathedral building. The fire was then in Beebe's block. He gave me his word he would do so, and I left there.

B. At what time was that?

A. I would not attempt for a single moment to state in regard to the time. That would be beyond me.

Q. Where did you go next?

A. I think I went down to Milk street. I think that was the very next point, and yet I may have been called in another direction, or did go in another direction. My memory is I went down Milk street, called a member of Hook and Ladder One, and opened a building and went to the top of it to watch the effect of the fire, its action, the different points at which it existed, and then determine as to the location of additional apparatus that might come in.

Q. All the city's apparatus was then engaged, as well as that that had arrived from other points?

A. All was engaged that was available at the time. We had but six steamers in the city proper. The apparatus from Charlestown and Cambridge arrived prior to that from the suburban districts of the city—Dorchester and other extreme places.

Q. All the apparatus available and under your direction were at work on the fire?

A. And doing good service.

Q. Where did you go next from there?

A. The next point I went was in quest of, I think, the chief of police, or his assistant. I met an officer and asked him at that point to go to the city-hall and say to Captain Quinn, the deputy chief, it was my desire he should organize a special force of fifty men or more, and I would give him the requisite authority to open carpet stores and places where woolens might be available, for the purpose of covering up buildings for the purpose of staying the progress of the fire; and that he should have authority to do this.

Q. What was the result of this request to procure carpets for stopping the progress of the fire?

25 A. I heard nothing of the report until upon inquiry some time afterwards; the officer reported he found the marshal at his home —or the deputy—and he gave him the message, and he said it was impossible for him under the circumstances to organize any additional force.

Q. Did you do anything with carpets—suspending carpets to stop the fire?

A. No, sir; I did not.

Q. After that, what did you do?

A. I did all that I possibly could from one point to another, working the apparatus to the very best advantage.

Q. We all know that. About what time was this, as near as you can tell; was it yet daylight?

A. No, sir.

Q. Midnight?

A. No, sir.

Q. Before midnight all this took place?

A. Yes, sir.

Q. You had not been to the city-hall?

A. No, sir.

Q. Where did you go from High street?

A. From High street I came up to Winthrop Square; from Winthrop Square I went to Milk street, and from Milk street I went to several other points, and one of these points was this High street again; and towards that vicinity my attention was called to the fact that several families were in a court there, and there was no means of escape, and I went there for the purpose of rendering relief in that direction.

Q. You did save them?

A. I did all I could.

Q. They were saved?

A. As far as I know, with but one exception, and I never was able to ascertain whether that was the fact or not. I then attempted, with the aid of some laddermen, at the request of a small youth who told me his parents were there, to effect a rescue.

Q. After that?

A. I then came up into Congress street.

Q. And then?

A. I found one of the buildings had fallen outward and had crashed on the opposite side of the street, and in the building there was

26 a young man at the window, with books in his arms, crying for assistance. The induced current at that time was very strong. There was no immediate force in that vicinity—none I could bring to bear—but a ladder was upon the opposite side of the street. I carried it across and put it into the window, and he effected his escape.

Q. At what point was the fire in Congress street at this moment?

A. Towards Summer street. I cannot locate it exactly, because the smoke and cinders and the extreme heat made it almost impossible to designate even streets or blocks.

Q. There had been no gunpowder used up to this time?

A. No, sir.

Q. Was it now midnight when the young man escaped, to your best recollection?

A. No, sir; I should judge, so far as my memory serves me, it was about 11 o'clock.

Q. Where did you go after this—after you left that point in Congress street?

A. Having located the apparatus, I went from point to point. Much of the details I have passed over, but I made it my business to look at the several points. If I found at any one point that a piece of apparatus, more or less, could be spared, or that the point could be strengthened by bringing up additional force, it was done. For instance, Mr. A, B, or C, serving as assistant engineer, was located at a certain point. He was instructed to hold that point. Messengers were coming constantly; they wanted more apparatus, or they could spare a piece of apparatus. I established my headquarters in Federal street.

Q. At what point in Federal street?

A. I am not able to designate the point precisely; but it was where I could be easily found in five or seven minutes' notice.

Q. Did you meet the mayor of the city at that place?

A. I did.

Q. Who else were present in Federal street?

A. There were present Engineers Green, Smith, Monroe—my impression is, Engineer Jacobs; but of this I am not positive; that is my impression.

Q. And the mayor?

A. And the mayor. I had sent previous to that messengers to the several engineers to notify them they would meet me at my headquarters for consultation.

27 Q. What was the nature of that consultation?

A. It was to take into consideration the necessity of using gunpowder, and for further information touching the fire, and the best effort that could be put forth to stay it.

Q. What is your best recollection as to the time of this council at which the engineers and mayor were present?

A. I should think it was very near 12; it might have been past 12, but that is my impression.

Q. About how long were you in council there?

A. Might have been fifteen minutes more or less.

Q. Was any decision arrived at in regard to the use of gunpowder?

A. There was.

Q. What was it?

A. By a vote of those present constituting sufficient authority under the statutes, the chief engineer was designated to use gunpowder by calling to his aid such assistance as might be necessary, and that vote being taken the matter was duly considered, and the chief designated to act with him Captains Green and Smith.

Q. The vote was that the chief should be authorized?

A. The vote of the board was that the chief had no authority under the statutes without the co-operation of certainly three, with which it

could be done; and again, that the building and street and number of such street should be designated.

Q. Was it in writing?

A. No, sir; writing materials were not very plenty round there at that time.

Q. It was never written?

A. No, sir.

Q. Then by vote of yourself and your associate engineers whom you have named it was decided that it was expedient to use gunpowder, and the chief and two other engineers were delegated to do it?

A. The vote was, if in the judgment of the chief that gunpowder could be used in any way to stay the conflagration the board were ready to co-operate, but it was contrary to their judgment that gunpowder was used.

Q. After that council what did you do; where did you go and what did you do?

A. I remained upon the spot and despatched a messenger to the fire-boat to bring powder, and it was brought.

28 Q. Where did you send for powder?

A. To the powder-boats in the harbor.

Q. What was done next?

A. The engineers went to their several posts, with the exception of Captains Green and Smith, two engineers.

Q. They remained with you?

A. They remained with me as long as I remained in that locality.

Q. How long was that?

A. It might have been one-half or three-quarters of an hour.

Q. Did you designate any buildings to be blown up while you were together?

A. No, sir; we did not.

Q. After you separated what did you do?

A. After we separated I received a messenger, or message through a messenger, for me to repair to the city-hall and see his honor the mayor. The messenger stated to me—it was a police officer—that one hundred of the leading citizens of Boston desired to see me in connection with his honor in reference to the saving of the city.

Q. You went to city-hall?

A. I did.

Q. This was about one o'clock?

A. I am not prepared to state the hour.

Q. To your best recollection?

A. My best judgment is it was between twelve and one.

Q. What did you find at the city-hall; whom did you find?

A. His honor the mayor, as I said, but the room was nearly full of citizens.

Q. What was done there—said and done?

A. I can't tell you what was said; there was a good deal said.

Q. The substance of what was said in relation to the use of powder.

A. The inference I drew was this——

(Objected to and excluded.)

Q. When you were there were Captain Green and his associate with you?

A. No, sir; on the fire ground.

Q. Had you and Captain Green and the other engineer whom you have mentioned as associated with you in this particular purpose decided to blow up or demolish any buildings at that time?

29 A. I stated distinctly we had not.

Q. When you were up to see the mayor and meet this concourse of citizens in his office there was no other engineer present but yourself?

A. I think not.

(Mr. Allen offered to put in the declarations of citizens, other than the engineers, in regard to the use of gunpowder; but was restricted by the court to the statements of those persons whom he proposed to "identify as having done what they stated they were going to do.")

Q. Did you see General Benham there?

A. I might have seen him but did not have the pleasure of his acquaintance.

Q. You are not certain whether you saw him there or not?

A. No, sir.

Q. Did you see General Burt there?

A. Yes, sir; I will say positively I did, but without knowing who he was at the time. I learned afterwards who he was.

Q. What did he say upon this subject?

A. That I would not state, because there were so many things said.

Q. Can you give the substance?

A. I can give you the substance of what was said.

Q. No; but what General Burt said?

A. I cannot give that.

Q. Nor the substance of it?

A. Nor the substance of it. I can give the impression left on my mind from what was said by all.

Q. What did the mayor say upon this subject?

A. He had nothing to say to me then. Our conversation preceded the meeting at the city hall.

Q. Can you name any person whose conversation you can remember; the substance of it? Mr. Carpenter—do you recollect of meeting him?

A. I recollect meeting him.

Q. Recollect what he said upon the subject?

A. My impression is he said nothing, but listened to what others had to say.

Q. Mr. Atkinson?

A. I don't know the gentleman.

Q. Name some person whom you then knew or now know who was present and took part in this conference.

30 A. I have just thought of one who it occurs to me what he said particularly touching the work we had on hand—Alderman Cutter.

Q. What did he say in relation to the subject?

A. He said in his business he undertook to do what he knew he had a knowledge of doing. As he had no knowledge of gunpowder or anything connected with it he would have nothing to do with it. I made no reply to that, as it was not addressed to me.

Q. While you were present at that meeting did you issue orders to use gunpowder?

A. I issued orders to the assistant engineers to use gunpowder.

Q. Did you issue orders similar to this one to Colonel Shepard?

A. Yes, sir; but that does not embrace the order as it was intended to be conveyed.

Q. Does it embrace the order that was given?

A. I am not positive. I have not seen one of those. I should like to see one. I should like to see the original over my signature.

Q. Have you not seen them since?

A. No, sir.

Q. How many of these orders did you issue, such as they were?

A. To my best judgment and recollection, ten to twelve.

Q. To officials or citizens?

A. To officials and citizens upon request; upon questions put to them; asking them if they would be willing to co-operate and aid in doing this work under proper direction. Receiving an affirmative answer, they were given that authority to pass the lines, to pass the police; and that was the main object of giving the order; to enable the parties who held the order to get into the immediate locality where they could be of assistance.

Q. You said they were officials or citizens?

A. They were citizens and officials combined.

Q. Who selected those persons to whom you gave those orders or directions?

A. I don't think there was any selection about it. Gentlemen anxious to serve the city presented themselves to do whatever might be presented for them to do.

Q. Those gentlemen volunteered their services and you accepted them and gave them the appointment, whatever it was?

A. As I should if you should volunteer to aid and assist me in any work, I should give you the requisite authority.

31 Q. They volunteered their services to assist and you accepted their services, giving them these appointments, whatever they were?

A. Yes, sir; that is true.

Q. Whether any other engineers were present?

A. Not to my knowledge.

Q. Whether any designation was made by you of any particular building where they were to use gunpowder?

A. No, sir; having previous to that designated two experienced men to go the district over—the entire fire district—to take into consideration the currents induced and outward, and such points as might be important, and report to me if in their judgment gunpowder could be used at all.

Q. How soon was that report made to you?

A. That report was made to me before I went to city hall by one of the parties; the other not until much later.

Q. Did he designate any particular building or any line?

A. His report was, that having traversed the district assigned him, he found no place, in his judgment, where gunpowder could be used practically to stay the conflagration.

Q. That was the report of one of the two engineers associated with you?

A. No, sir.

Q. He was not one of the engineers?

A. No, sir.

Q. Who was he?

A. Inspector and surveyor of buildings at that time.

Q. You appointed the inspector and surveyor of buildings to survey the buildings and see where gunpowder could be profitably and properly used, and he reported nowhere?

A. If it could be called an appointment. I made the request and he complied with it cheerfully.

Q. That was his report?

A. That was his report.

Q. What was next done in respect to using gunpowder?

A. I left the city hall and repaired to the fire ground.

Q. At what point?

A. Federal street. The movements that were made next were for a change of the apparatus forming a line on Washington street, the southerly end on Summer street and the extreme easterly end at Milk
32 street, and to form a line on State street and Lindall, and also to form a line at right angles with the State street line at the foot of Water street.

Q. What was done in regard to the use of gunpowder?

A. Personally, what was done I could not state. I expected to meet the engineers and the parties who were to assist in the organization of the special force, and then systematically proceed to work, if a line of action could be marked out, to use gunpowder; but no such organization was effected, so far as I know anything about, and I failed to meet any of those parties who volunteered to help.

Q. Did you meet the two engineers who were to be associated with you?

A. Yes, sir.

Q. Did you give any directions, or do anything in regard to using gunpowder—you three?

A. I authorized, I think, my impression now is, Capt. Smith to receive the assistance of parties to aid and assist him, and when the arrangement was made to come to my headquarters in Federal street, and the designation of the proper buildings would be made.

Q. Did you meet him there?

A. No, sir. I met him right after that, and gave him an order which I was sorry was obeyed, under the circumstances, and the engineer proceeded to Charlestown and Chelsea to obtain gunpowder.

Q. What engineer was that?

A. Capt. Smith.

Q. He was one of the three?

A. Yes, sir.

Q. Did you and Smith and Green meet again that morning?

A. Oh, yes.

Q. Did you three designate any buildings and order them to be blown up?

A. I said we did not designate any buildings during the night.

Q. You knew that gunpowder was used in various places?

A. I have reason to believe it was.

Q. You knew there were explosions?

A. Yes, sir; both from gunpowder and gas and rarification of air. There were several explosions going on all the time; a great many more were claimed for gunpowder than were actually from that.

Q. You and the engineers did not direct the demolition of any building in Boston by gunpowder?

33 A. No, sir; not when I was present. If any three engineers did when I was not present, I have yet to learn the fact.

Q. Do you know that any three engineers directed the demolishing of any building by gunpowder?

A. I do not know the fact.

Q. Do you have any recollection of this building at the corner of Devonshire and Milk, and do you know whether that was demolished by explosion or burning?

A. I know it was burned; I have no knowledge of any explosion.

Q. (Indicating on a map.) That building was not burned?

A. No, sir. The southeasterly corner of the post-office was chipped. This side remained intact.

Q. You know the post-office was damaged?

A. I know it was chipped by the flames.

Q. In what direction did the fire approach this building; that particular point?

A. The main fire was from the extreme south or foot of Summer street, coming up across the other way. (Indicating on map.) That is the main fire. The Summer street fire, from the induced currents running from West, Bromfield, and other streets, swept that section and forced the fire to a common centre. The flames went over onto the wharves and caused the largest body of fire at about eleven o'clock.

Q. The fire stopped there and didn't cross the street from that corner?

A. Yes, sir; the fire was stopped here.

Q. Do you have any recollection whether that building which I have pointed out on the corner was blown up from any cause?

A. My impression is that it was not blown up. I don't know the fact. My impression is it was not blown up.

Q. How about that building right opposite on the other side?

A. I have no knowledge of that. The building is too low to blow up.

Cross examination:

Q. (By Mr. HEALEY.) In these consultations you had at the mayor's office and in Federal street, what was the character of those assemblies; as to whether riotous?

A. No, sir; the opposite; the highest type.

Q. Who were they principally composed of?

34 A. At my headquarters, the engineers, Alderman Wooley, Alderman Jenks, Councilman Jones.

Q. That is a fair representation?

A. Yes, sir.

Q. Was there any disposition manifested any where for any wanton destruction of property?

A. I was not made aware of anything of the kind.

Q. Were they not all striving as well as they could to save what might be saved and to stay the conflagration?

A. If I had not been so impressed, they would never have got any permission from me to assist.

Q. How was it in regard to the buildings along here in this direction? (Indication on plan.)

A. They were burned. There was a lot of buildings below there which were demolished.

Q. To what extent did it burn round the new post-office?

(Witness indicated on the plan.)

Testimony of H. W. Benham.

Q. (By Mr. ALLEN.) You are an officer of the regular Army?

A. Yes, sir.

Q. Stationed at the forts in the harbor?

A. In charge of the fortifications.

Q. Where were you stationed in November, 1872?

A. As now stationed. I resided in Hancock street.

Q. You recollect the great fire of November 9th and 10th?

A. I do.

Q. State whether you took any part in suppressing or attempting to suppress the fire on the night of November 9th and 10th?

A. I went at about four o'clock in the morning, as near as I recollect, or soon after, to the mayor's office, and then offered my services in any way that I might be of use. Nothing was asked of me for perhaps fifteen or twenty minutes. I then suggested to the mayor that the garrisons at the forts should be written for, or the officers of the forts, to send up spare men to guard property, &c., during the fire. It was as-
35 sented to by the mayor, and I wrote notes to the commandant of Fort Independence and the commandant of Fort Warren, requesting them to send up all the spare men, with sergeants, or ordnance sergeants, with fuses or with fuses and powder. I don't know whether the last was requested of me by the mayor or not. I don't recollect, but I recollect writing for them, understanding that there was powder in the city and to be used. I said, "It will need special messengers to have the return of these men as early as possible." Mr. Edward Atkinson offered to go for one, and another gentleman, whose name I don't know, for another messenger. Remaining for some time afterwards, and not being called upon, I went out to make a reconnoisance on my own accord. I left word at 40 State street, asked them to open the door, and told them regular troops would be coming up, and urged them to call upon the first officers calling for a corporal and detachment to guard that particular building. I recollect that as one of the things I did in this reconnoisance. I returned to the city hall, and having noticed in passing through Devonshire street a building, on my right hand, with "Evening Gazette" upon it, as a weak building, I then recommended strongly to the mayor of the city that that building should have powder placed in it preparatory to its expected use, to its being needed. Also that the building at the corner of Milk street, Currier & Trot's, should be mined. Nothing was done of that kind that I know. I then went up to the dome of the city hall, and was there but a few minutes when I came down and said to the mayor that I was prepared to recommend in the strongest manner that that building should be blown up immediately—the Currier & Trot building.

Q. That is opposite the Old South?

A. Yes, sir. The mayor left the room within a minute or two, I should say. I don't know whether to give the order, but I suppose so. I heard nothing said to that effect. In about ten or fifteen minutes I heard a dull thud, and some one came in and said that that building had been blown up, but they thought not very effectively. Within ten minutes, I should judge, some other person came in and urged the mayor, as I recollect, to have the Gazette office mined, which I had recommended some twenty minutes before.

Q. Can you give us the locality of that Gazette office?

A. In passing in from the old State House I noticed the building half way on the block before you came to Water street; I noticed it by the bricks being painted white, and "Evening Gazette" written on the bricks. I fixed it by that as one of the most proper buildings to be de-
36 stroyed. I don't know the number; I didn't notice it. After all this occurred, Mr. Atkinson came to me and said, "Why won't you go out and take the direction?" or words to that effect. I said, "I have no authority; I have offered my services, but they have not been asked for since, and no authority has been given to me." He said, "I will get you the authority." He went across the room to the mayor, who perhaps was fifteen feet distance from him, and I saw him in conversation for some five minutes perhaps, and I heard the mayor say, "I am afraid of a conflict of authority." I think those were his exact words; and within a minute or two he repeated that expression, or a similar

expression. I then said to Mr. Gaston, "If you fear a conflict of opinion or action between Mr. Damrell, or the chief engineer," I forget which I said, "and myself, I will say to you that where given his opinion shall be carried out. Do you wish me, when I am not with him, to act on my best judgment?" I said that, or words to that effect. I understood him —I think he said yes—most distinctly to assent to that.

Q. The mayor?

A. The mayor to assent to that; to say yes, or to assent fully, to give a full assent. I went out with Mr. Atkinson, and first started for Mr. Damrell to consult with him.

Q. What did you do next?

A. I first sought for Mr. Damrell, to consult with him. I wish to say here that I never solicited authority from the mayor in any way for the blowing up of buildings. My own personal and official pride would have prevented such a request. Failing to find Mr. Damrell, we first saw Mr. Carpenter, I think it was, and he was earnest and anxious, and I think, as I understood, engaged in mining or having buildings blown up, as I understood him. I know in conversation with him then, and always afterwards, our opinions were the same. I understood he had the power or authority, I don't know from what source, to use his judgment to blow up buildings with powder. I always understood that I had, as I have stated, only subject to my being with Mr. Damrell; that then if his opinion differed from mine, mine was not to be carried out.

Q. What did you do in respect to this matter after that?

A. It would be a very long affair to describe the whole affair of six hours.

Q. Whether you took part in blowing up any building after that?

A. I directed in several cases the mining of buildings or the introduction of powder into them.

37 Q. What street?

A. I recollect more distinctly upon Kilby street than any other, and east of Water street, or north of Water street.

Q. Do you have any recollection of any building opposite the post-office or in its vicinity?

A. On which side of it?

Q. On the Milk street side?

A. I was not in Milk street, or near that; not nearer than Water street any time during the fire.

Q. Do you recollect during that night asking for authority to blow up buildings, from any person?

A. I did not ask authority to blow up buildings, from any person. I supposed no one to have the right to give it to me but the mayor, until about ten or eleven o'clock in the morning of Sunday, when the mayor then informed me, and for the first time gave me the idea, he hadn't the right to give such authority.

Q. At the time when you left the mayor with the supposed authority to blow up buildings, had you then any doubt of his authority, or any reason to doubt it?

A. Not the slightest; nor any reason to doubt that I had it in full, with the limitation of meeting Mr. Damrell.

Q. State, if you please, whether any conversation took place in the presence of Mr. Otis Norcross on the subject of blowing up buildings that night?

A. I had different conversations with Mr. Norcross, and at one time suggested that we should go out together, and he started to go out with me and then stopped, saying, "The mayor has requested me to remain

here for consultation with him." I don't recollect of any conversation with him on the special subject of blowing up buildings.

Q. What conversation, if any, did you have with the mayor in Mr. Norcross' presence on that subject; whether you asked him any question?

A. I never did ask authority of the mayor. I never definitely or directly asked authority of the mayor to blow up buildings. I will here state, as it is due to myself and my own personal and official pride to say it, I saw in the fire testimony that Mr. Norcross is reported as saying that I repeatedly came to the mayor and asked for authority to blow up buildings. I immediately wrote to Mr. Norcross, stating it was incorrect. He didn't withdraw it. I suggested to him he might have
38 misunderstood my suggestion to the mayor that he should order buildings to be mined for an application of my own for authority. Mr. Norcross did not withdraw his accusation, as I considered it, and he did not repeat it. If he had repeated it I should have said as I now do under oath, that that accusation—there is but one word I can properly use, there is a coarser word which I will not use—is false. There was no ground to urge for authority to do such a thing.

Q. (By Mr. HEALEY.) On the night of the fire, in the mayor's office, or anywhere where you went, did you see any disposition manifested to destroy property?

A. I did not; wanton destruction I understand you to mean.

Q. Were they all engaged apparently in good faith to save all the property they could?

A. I think they were. I may add further, that although I differed, I found persons differing from me in the most direct degree who were laboring earnestly at the fire, differing from me in the most degree in their opinion of what should be done, I saw no one but what I felt was most honestly and earnestly endeavoring to carry out what they thought was for the best interest of the city.

Q. Were they boisterous or quiet as such an assembly could be under such circumstances?

A. I should say as quiet as men could be under such circumstances. They were anxious to get to the fire, and pressed that way, and needed to be kept off for their own safety; but I mean I did not witness anything I should say of mob, or any attempt at wanton wrong.

Q. (By Mr. ALLAN.) You did not get onto the ground until four to five o'clock?

A. No, sir.

Q. How far had the fire progressed at that time?

A. My recollection is, in Water street, for instance, it was below the office of the Boston Post; perhaps the second building below. One of the buildings I suggested blowing up was the next one below the office of the Boston Post, on Water street.

Q. It had come up to Milk street and crossed Milk street?

A. It had crossed Milk street there as I recollect. I don't think I passed down Water street below the Boston Post at any time; of course, in consequence of the fire.

39 *Testimony of William Woolley.*

Q. (By Mr. ALLEN.) You were one of the aldermen of the city of Boston in November, 1872?

A. Yes, sir.

Q. Recollect the night of November 9 and 10, the great fire?

A. I certainly do.

Q. Where were you when you first knew of the fire?

A. In the vicinity of city hall.

Q. What did you first do?

A. I first went to the fire and staid there fifteen or twenty minutes, and then went to East Boston.

Q. Where was the fire burning when you first reached it?

A. In Tebbetts, Baldwin & Co.'s building. I did not go very near to it.

Q. You went to East Boston shortly afterwards?

A. Yes, sir.

Q. For what purpose?

A. At that time the second alarm was given, and I thought the whole apparatus might leave that part of the city, and to guard against that, and to see that all the apparatus that could be spared was sent over, I went to East Boston.

Q. How long did you remain in East Boston?

A. From the time I left until I got back might be an hour and a half or two hours. In the mean time there was a fire at East Boston.

Q. This same evening?

A. Yes, sir.

Q. After you came back from East Boston, what did you first do?

A. Went directly to Winthrop Square.

Q. Was Beebe's large granite building on fire then?

A. It was, sir.

Q. What did you do then in respect to the fire?

A. I met the chief there and had some talk with him in regard to the fire, and in regard to out-of-town apparatus, what he had sent for, and at his request went down on the other side of the fire to see what progress the fire was making in that direction.

Q. After you made that examination did you return and report to the chief?

40 A. I did.

Q. Where did you meet him?

A. Very nearly in the same place where I left him, in the vicinity of Winthrop Square; it might possibly have been on Franklin street.

Q. What did you do next in respect to the fire?

A. I was round and about the fire the whole night in different localities. I gave my more particular attention from that time up to eleven o'clock or half past eleven to the fire on the southerly side of the fire, or the fire in the vicinity of Summer street.

Q. And after half past eleven where did you go, and what did you do?

A. I think it was about twelve o'clock, a little later perhaps; I have no recollection of looking at my watch during the whole night, but I should judge about that time I received word from a fireman, a messenger, that the chief would like to see me, if possible, in the vicinity of Milk street on Federal; that he had sent for the engineers to meet him there as far as practicable, and I immediately worked my way round the fire, having to go some ways round to get there. I think I got to that vicinity about quarter after twelve.

Q. Did you meet the chief there?

A. I did.

Q. Who else were with him?

A. Captain Green, Captain Smith, Captain Monroe, I am pretty positive. Aldermen Jenks and Cutter, I think, was there; I think Mr.

Jones, of the council. I don't recollect of any more being present at that time, but I should judge there was some twelve or fifteen.

Q. What was done at that council?

A. I was not present at the council. They had had what you might call an informal meeting there. I arrived just as they had broken up or got through with their business.

Q. What was done next, to your knowledge, after that?

A. I don't think I remained more than five or ten minutes.

Q. What did you do next?

A. I went round by Tremont street, to the south side of the fire.

Q. How long did you remain there?

A. An hour or two; until we had stopped the fire in that direction.

Q. Where did you go then?

A. Up around the fire until I got to the corner of Winter and Washington streets, and remained there in that vicinity. I had not
41 been on the ground more than five minutes when I received a message that the mayor would like to see me or Captain Damrell at city hall.

Q. Did you go to city hall?

A. I did, sir.

Q. Who did you meet there?

A. I should say there were 100 gentlemen there; perhaps more.

Q. In the mayor's room?

A. The mayor was there, Captain Damrell, Alderman Cutter and several other citizens, General Burt among others. I should not try to call the names of them.

Q. State what was done in respect to the fire? Name any person whom you heard speak of the fire—especially of the use of gunpowder; who did you hear speak on that matter?

A. The only gentlemen who said anything to me was the mayor. I think his remark was, "Mr. Woonfey, you are just the man we want to see."

Q. What else did he say?

(Objected to and excluded.)

Q. State what persons were there present whom you heard speak on this subject i

A. I could not say any other person; all the conversation I had was with the mayor. I was not in the room more than two minutes at the most.

Q. What did you do after that?

A. I immediately returned to the corner of Washington and Summer street.

Q. After that?

A. I remained there until the fire was virtually stopped in that direction, and came round down—I think I came clear round and went down State street as far as Kilby.

Q. Then?

A. I think I went on to Washington in the vicinity of what was the old Transcript building, and did the best I could with the fire department to stop the fire.

Q. Did you see any buildings blown up there?

A. No, sir.

Q. After that?

A. After that I went into Kilby street.

Q. Did you see any buildings blown up there?

(Objected to and withdrawn.)

42 Q. Do you recollect of visiting or being near the corner of Milk and Devonshire streets.

A. I was only in that vicinity the time I spoke of; when I came round I passed down Milk street.

Q. What time, about?

A. Quarter past twelve, might have been a little earlier; might have been later; might not have been twelve o'clock.

Q. You were not there after that?

A. No, sir.

Q. (By Mr. HEALY.) Have any trouble in getting through those streets?

A. The streets were entirely clear. There was not half a dozen persons on Milk and Federal streets besides the persons I have named. The street was roped off on Milk street at the head of Washington street, and roped off at Congress street.

Q. Did you see any persons that were endeavoring wantonly to destroy property?

A. None came under my observation.

Q. On the other hand, were all the parties engaged in good faith and desirous of saving all the property they could?

A. Apparently so, except the crowd outside, who were spectators.

Q. They were kept back from the fire?

A. They were kept back from the immediate vicinity of the fire.

Q. When you went down Milk street, the fire had not reached Milk street?

A. No, sir; I went to Federal street, and to the best of my judgment the fire was in the vicinity of 45 to 48 on Federal street. Perhaps to the best of my judgment 250 feet from Milk street. That was the nearest the fire was there. I went down to the fire.

Testimony of George O. Carpenter.

Q. (By Mr. ALLEN.) You were one of the aldermen of Boston in Nov., '72?

A. No, sir.

Q. You were in the city at the time of the fire?

A. Yes, sir.

Q. You had been an alderman before that?

A. Yes, sir.

43 Q. What time did you go to the fire?

A. In the early part of the evening; about nine o'clock.

Q. Passing over the intervening space of time did you go to the mayor's office sometime after midnight to meet him and other gentlemen there?

A. I went to city hall; I didn't see the mayor.

Q. Who did you meet?

A. I met the chief of police; I went into the chief's office.

Q. Did you see the chief engineer, Mr. Damrell?

A. Not there, sir.

Q. You did not see him there?

A. No, sir.

Q. Did you see him at any time soon after that?

A. I saw him during the night and morning.

Q. State whether you received any order from him in respect to blowing up buildings?

A. I received a paper while I was in the chief of police office, similar to one you have read this morning.
Q. Similar to the one directed to Col. Shepard?
A. Yes, sir.
Q. To whom was it directed?
A. My memory fails me, although I think it is in my evidence given there before the committee. It was not in my name. I did not discover it then.
Q. By whom was it handed to you?
A. I am unable to say.
Q. Was it in the office of chief of police?
A. Yes, sir.
Q. It was similar in form to the one which has been exhibited in court?
A. I judge so.
Q. Whatever became of that?
A. I am unable to say.
Q. Did you do anything in pursuance of the paper you received?
A. I endeavored to assist to the best of my ability.
Q. Whom did you assist, or attempt to assist?
A. I can't say I endeavored to assist any one in particular. I did everything generally.
Q. What did you do?
44 A. I assisted in keeping the crowd back, and tried to act as a special policeman is expected to on such occasions.
Q. What else did you do?
A. I don't remember anything particular.
Q. Did you do anything in respect to blowing up buildings or demolishing them by the use of gunpowder?
A. No, sir.
Q. Do you recollect the building being blown up at the corner of Devonshire and Milk streets?
A. No, sir; I do not.
Q. Were you there on the morning of Sunday, November 10, any time after midnight—in that vicinity?
A. I was.
Q. At about what time?
A. I should say two o'clock.
Q. Do you know whether buildings were blown up there?
A. I do not. You ask me of my own knowledge or my impression?
Q. Any manner in which you may know.
A. Then I don't know that any buildings were blown up.
Q. Do you know whether any gunpowder was carried into Milk street on that morning for the purpose of blowing up buildings?
A. No, sir.
Q. Did you see any carriage you had reason to believe contained gunpowder?
A. Yes, sir; I was in one of them.
Q. What kind of a carriage?
A. An ordinary hack.
Q. What was in it?
A. Kegs I believe to contain gunpowder.
Q. Where were they carried?
A. They were carried along Devonshire street near the Rialto building.

Q. What was done with the powder that was in the carriage when it was carried to the vicinity of the Rialto building; was it taken out?

A. I presume so.

Q. Did you leave the carriage before the powder was taken out?

A. I was obliged to, to get it out.

Q. How much powder was there in the carriage; how many kegs?

45 A. I don't remember how many; about six or seven small kegs.

Q. In ordinary powder kegs?

A. Yes, sir.

Q. Where did they come from?

A. From Dock Square.

Q. Did you bring it there?

A. It was brought in the carriage there.

Q. Was any one else in the carriage besides yourself?

A. Yes, sir; a gentleman.

Q. What was his name?

A. I don't recollect. He had his books and was going home.

Q. Did you procure the powder?

A. No, sir.

Q. By whose direction was it procured?

A. I don't know.

Q. By whose direction was the carriage driven to near the Rialto building?

A. By those who were in attendance with me and left the city hall.

Q. When you arrived at or near the Rialto building, you say you got out first; what did you do?

A. I don't remember. My impression is I went over on the post-office side of the fire. I don't remember particularly.

Q. You don't know what was done with that powder?

A. No, sir.

Q. How long did you remain there near the new post-office?

A. I staid there perhaps five minutes.

Q. Where did you go then?

A. I don't remember where I went directly from there, but my impression is I went into Water street and State street.

Q. Do you recollect going into the store of Armstrong & Co.?

A. No, sir; I do not.

Q. Did you remain in that vicinity any length of time?

A. This carriage was stopped this side of Milk street.

Q. You came down Devonshire, and the carriage stopped opposite the post-office before you got to the Rialto building?

A. About at the Rialto building.

Q. Then you went over opposite the post-office?

A. On the opposite side of the Rialto.

46 Q. And staid there five minutes; where did you go after that?

A. I don't remember where I went, but I think it was State street.

Q. Have you any means of knowing whether the building diagonally opposite the Rialto was blown up?

A. No, sir.

Q. What was said by any persons in the carriage as to where the powder was to be carried, or what it was to be used for?

A. I don't remember.

Q. Can you state what was said when it was removed from the carriage?

A. No, sir.

Cross-examination:

Q. (By Mr. HEALY.) In your going about at the fire did you see any persons endeavoring to destroy property?

A. No, sir.

Q. On the other hand, were they all engaged, apparently in good faith, to save all they could?

A. So far as my observation went.

Q. Any difficulty in going about through the streets inside of the lines?

A. No, sir.

Q. The crowd were kept off?

A. Yes, sir.

Q. (By Mr. ALLEN.) Shortly after you left the place where you carried the powder, near the Rialto building, state whether you heard any noise of any explosion.

A. Yes, sir; it was quite common through the evening. I heard them frequently.

Q. Whether you met Gen. Burt there?

A. I met him during the evening, I think, very near the P. O.

Q. Near the corner of Milk street and Devonshire street?

A. Yes, sir.

Q. State whether there was an explosion at the corner of Milk street and Devonshire, after you delivered the powder there.

A. I think I have heard explosions in that immediate vicinity, as I have in others.

Q. Whether you heard an explosion in that immediate vicinity shortly after you left the powder?

47 A. I don't remember. You probably have my evidence there taken directly after the fire, and my memory was fresher then than it is now.

Q. I will ask you the same question. (Reading.) "Q. What quantity? A. My impression would be 200 lbs. in cans. Q. What was done with that? A. That was taken to the corner of Milk and Devonshire streets, where it was stated to us that Gen. Burt would be found. Q. What was done then? A. At that time we waited for some one, who knew about the business, to appear; who the parties were that appeared there I am unable to say, except that two or three of my patrolmen stuck very close to me to see that the powder was not delivered to the wrong parties; I cannot say who the parties were. Q. What did they do? A. Well, now, I must say right here, that, of my own knowledge, they did nothing, and that I know nothing. Q. Pass over all that you don't know of your own knowledge. Do you know anything about any other powder that night? You know anything of your own knowledge of any incidents that occurred in the street?"

Witness looked at the book and replied:

A. That does not help my memory at all.

Q. (Reading.) "Was there any explosion at the corner of Milk and Devonshire streets after you delivered the powder there?

A. (Reading.) "Yes, sir; I heard an explosion—whether from falling walls, or whatever it may be, I don't know."

Q. Did you hear it at that point or near there?

A. No, sir; I heard explosions; whether they were falling walls, or whatever they might be, I don't know.

Q. But you heard a noise of an explosion shortly after you left the powder there?

A. So it appears from my evidence there.
Q. Have you any reason to doubt that to be correct?
A. No, sir.
Q. (By Mr. HEALY.) I don't understand you to locate it in this building in question?
A. No, sir.
Q. When you speak of an explosion and the falling of a wall, could you distinguish between the tumbling of a wall when one fell when a building was burned, and when there was an explosion of gas or powder?
A. No, sir; I think in Franklin street, when the flames went across the street, the noise was very similar to that of walls falling.
48 Q. When you speak of an explosion you don't speak of an explosion of gunpowder?
A. I don't know anything about there being explosions—I meant a loud noise.
Q. How far did you stop from Milk street?
A. Might be 100 feet.
Q. How far, at that time, had the fire progressed towards Milk street?
A. My impression is the fire was then about a little more than half way between Franklin and Milk streets.
Q. I understand you to say you don't know to whom you delivered that powder that you had?
A. No, sir.

Testimony of Edw'd Atkinson.

Q. (By Mr. ALLEN.) You were in Boston at the time of the great fire of November 9 and 10?
A. During a large part of it.
Q. At what time did you first visit the fire?
A. I should think about ten o'clock. I was in Brookline when my attention was called to it, and drove in.
Q. What did you first do after you arrived in Boston?
A. Went to the store of J. C. Howe & Co., on Franklin street, and got out books and papers.
Q. Next?
A. To the warehouse of James L. Little & Co., and tried to do the same service.
Q. And then?
A. Then went to seek what there was that a single man could do, but for some time could not find anything.
Q. State in you own words what you did during the next two or three hours. Whether you went to city hall?
A. I can't be sure of hours; after finding what I could do and getting through with it, I went to State street and looked round there; got the keys of my own safe, and carried the books and papers from State
49 street down to Boylston street. Came back and then began to observe what appeared to be the use of gunpowder. I thought it was being used too near the line of fire to be serviceable.
Q. Did you hear explosions?
A. I heard explosions that appeared to be explosions of gunpowder, and I supposed they were, knowing nothing about gunpowder, or how to use it. It stood in front of the Union building, on State street, and was there requested to go to the mayor's office and see how the gunpowder was to be used.
Q. About what time was that?

A. I cannot be sure of hours; somewhere in the course of the night. I should say, by reference to what I did afterwards and the time it must have taken, that that must have been somewhere in the neighborhood of midnight, or between midnight and one o'clock in the morning; I can't be sure.

Q. State what then took place.

A. I went to the mayor's office, and was referred there by some one to General Burt. I went back and reported to those who had asked me to go that General Burt appeared to have something to go with gunpowder. I sought him, but didn't find him.

Q. What did General Burt say when you first called upon him?

A. I didn't find him; I didn't see him through the whole fire. I then, standing there, said to some one, the fire then being on Milk street, that it seemed to me the line of defense, if any was to be taken with gunpowder, should be on Water street, above and below the new post-office, by making a wide street down from Washington street as fast as was necessary. Mr. Wise and myself were standing together. Mr. Wise said, "If we only had an officer, or General Benham. I looked up and saw General Benham coming down State street; I spoke to him. I said the use of gunpower appeared to me to be in unskilful hands, as it was being used so near the line of fire, and asked him if he could not do some good. He said he should be glad to be of any service he could be, and turned with me to go to the city hall. On the way we spoke of the right method of exploding buildings, and as we passed the head of Water street, or near it—I will not say we passed the head of it; we might have gone up through the alleys—I indicated to him what seemed to me to be the right line of defence at that time, if anything was to be done of that sort. We went into the mayor's office, and I introduced him to the mayor. Some conversation was had, the precise character of which I cannot now recall, but it was to this effect: that the mayor had no authority to grant the privilege to blow up buildings; that it lay with others; precisely who I did not understand. I was referred again to parties whose names were upon a paper upon a table as having authority. The two I recollect was General Burt again and Mr. Carpenter, who has just testified. Again conversation was had in regard to the method; and General Benham says, "I can do nothing without trained men." I said, "Are there any soldiers at the forts?" He replied, "Yes, but not under my orders." I said, "Can't we get them?" He said, "I suppose they would be sent by the officer if I sent a request;" and I then turned to some one—I will not say to whom—and proposed that trained men should be sent for, to wit, regulars. The mayor assented to the fitness of that proposition. I asked him if he would sign an order for me to take any tugboat I could find in Boston Harbor and go to the fort. He said yes. I drew two orders; one of them was placed in my charge, another in the charge of a young man who, I think, was in some way connected with the city government, but I can't recall his name. I went either to T or Central Wharf and found a tug, and went to the fort and delivered my message. The officer in command assigned a lieutenant and I think some eighteen men, and we came up at early dawn. I think few persons had such a view of the great fire as we had from that boat.

Q. Did you bring any powder?

A. We brought no powder.

Q. State whether you procured powder for the use of any person?

A. I did not at that time; I did at another time.

Q. Whether you had anything to do with the procurement of gunpowder during that time?

A. I did not with the procurement, but with the placing of some gunpowder in Kilby street, under the orders of some persons whom I supposed to have authority in the matter—did have to do. Gunpowder was called for at that point by persons supposed to be in authority. That is all I had to do with gunpowder—in Kilby street.

Q. You had nothing specially to do with it in Milk street?

A. Nothing whatever. That was before I went into the matter at all.

Q. At the time you came up with your boat and the eighteen soldiers from the fort, were there any military around the edges of the fire?

A. I think not. I think they had not arrived. As we passed up State street one of the engineers asked me to have some of them
51 assigned to the protection of the hose; they found it impossible to prevent carriages driving over the hose to what was then the key of the whole position; and I believe some of the soldiers were then assigned to that duty, after they reported to the city hall. The hose was in danger from the constant passage of teams trying to get away with goods. There were no bridges.

Q. (By Mr. Healey.) You know nothing about this particular building?

A. Nothing whatever.

Q. At the city-hall, or elsewhere, in all your journeyings through the burnt district, did you see any persons trying to destroy property wantonly, or engaged in endeavoring to protect property?

A. With the exception of a single observation, endeavoring to protect. At one time during the night I went clear around on the back side of the fire, and saw people running away from Pearl street with boots and shoes. It was petty pilfering.

Q. Do you know whether that was pilfering?

A. I do not.

Q. Don't you know that after the merchants found they could not protect their property any longer, they flung their doors open and told the crowd to take what they could?

A. I was so informed.

Q. You don't know that of your own knowledge?

A. No, sir.

Q. I understand you to say you saw great numbers running away with boots and shoes on their shoulders?

A. Not a great many—a few persons.

Q. Not in boxes, but loose?

A. Loose. So far as the masses of the people were concerned, I believe they were endeavoring to do their duty to the best of their ability.

Testimony of G. A. Ordway.

Q. (By Mr. ALLEN.) Where do you reside?

A. Charlestown.

Q. You were a policeman of the city of Boston, in November, 1872?

A. Yes, sir.

Q. Where were you when the fire broke out?

52 A. At home. I lived near the fire, on Harrison avenue. I went to the fire from there.

Q. Were you on the day or night police?

A. Night. I staid there a short time and found the fire was spreading and went to the station-house. I was ordered by my captain (wl o

I found at the station-house at that time in charge) back to the fire in full uniform, and went back and reported to the sergeant who had charge, and acted under his orders.

Q. Where were you from that time until midnight?

A. In Summer street and that locality.

Q. After midnight, do you recollect at any time being in Milk street, near the new post-office?

A. Along towards morning I was there; perhaps three o'clock.

Q. Do you have any recollection of visiting the store of Armstrong & Co., directly opposite the new post-office and diagonally from the Rialto?

A. I was in that vicinity opposite the new post-office.

Q. For how long?

A. An hour or an hour and a half.

Q. Did you go in the store of Armstrong & Co., the firm of lithographers opposite the new post-office that night?

A. I was in the store there that they blowed up. I could not say whose store it was. It was on the upper corner.

Q. You were there when that was blown up?

A. Yes, sir.

Q. Some time previous to this being blown up, did you go into the building?

A. I was in the lower part of the building, or on the steps of the building inside of the door.

Q. Were there persons in the building when you first went there?

A. Yes, sir.

Q. What were they doing?

A. There were people there taking goods out, and there were people there who seemed to be officiating and doing what they could for the city of Boston.

Q. Those people that were taking goods out—what kind of goods were they.

A. I should be unable to state. I saw so many taken out that night.

53 Q. You saw some taken out of this store?

A. I saw goods taken out; packages.

Q. Was there any team in front of it?

A. There was a team there; yes, sir, loaded up.

Q. Loaded from this store?

A. Yes, sir.

Q. What next took place there; you were there and saw them taking the goods out and putting them in the team. What next did you see?

A. The next I heard the building was to be cleared. They were going to blow it up.

Q. Who did you hear that from?

A. I am unable to state who I heard it from. I don't think I saw but one man officiating that I was acquainted with that had anything to say about blowing up buildings, and he didn't have much to say about blowing up. I saw him that night, and he was about the only citizen I saw that I could recognize.

Q. At this moment who were in the streets near by?

A. It would be hard for me to state.

Q. Whether a few or many?

A. The streets were full—that is, as far back as the line. There was a line, and the officers were keeping them back as much as they could. There was a great many in the street at the time; 50 or 100 or more.

Q. The street was crowded?

A. Yes, sir; the street was crowded.

Q. What was the talk of those people in the street at this precise time?

A. The people were very much excited. Every one was excited. The different classes of people all appeared to be very much excited.

Q. Whether quiet or noisy?

A. Some of them were noisy. You always find more or less noise at those places. Some were noisy and some quiet. Those who were trying to do what good they could were more or less excited; and the people whom we always find at such places to do what injury they can were more or less noisy.

Q. How was it at that precise time—quiet or noisy, among that crowd?

A. I should call it noisy.

Q. State whether the crowd—I mean taking the crowd as a crowd around that building—whether they were people who were sober or partially intoxicated, or what was their condition?

54 A. I could not state. Probably there might have been some who were intoxicated and others who were not.

Q. Is that your judgment or recollection of the crowd now?

A. My recollection of the crowd is, there were more or less at different points that were intoxicated, but you find those among all these crowds.

Q. Is it your recollection that more or less of this crowd around this building were intoxicated?

A. I don't recollect that any of them were intoxicated particularly.

Q. What is your best recollection?

A. My recollection—so far back I can hardly remember fully. You find in all these crowds—I have always found it so—that there are people like those you have had on the stand here, business people; and then you find people who are noisy and more or less intoxicated, and who try to do all the injury they can.

Q. Whether you heard any cries or shouting in the crowd?

A. I heard noises all the evening.

Q. State what any of the crowd said around this building when you were clearing it.

A. When we told them it was to be blown up, you could hear them holler "Blow the building up! Blow the damned thing up!"

Q. You heard that?

A. I heard that in the crowd.

Q. From a number in the crowd?

A. Yes, sir.

Q. Did you see any powder carried into that building?

A. I could not say it was powder. I saw kegs carried into the building. I should have all the reason to suppose it was powder.

Q. Ordinary powder kegs?

A. I saw a keg carried in there.

Q. Where did that come from?

A. It was taken from a hack.

Q. Near by?

A. Yes, sir.

Q. And carried into this building?

A. Yes, sir.

Q. Do you know what was done with it after it was carried in?

A. No, sir.

55 Q. At that time whether anything was said or done by the people in the building? Did they continue to carry out their goods, or what did they do?

A. After this was carried in they had orders to clear the building, they were going to blow it up.

Q. Orders from whom?

A. I could not tell you who the orders came from. They came from somebody who was officiating.

Q. Did they have any uniform on?

A. No, sir.

Q. Were they known to you personally?

A. Some of them were men I have seen a great many times, but I don't know who they were, or what their names were.

Q. Did you obey those men?

A. I did.

Q. Did you know whether they were officials or not?

A. I didn't know whether they were legally appointed officials, but we supposed they were.

Q. Was anything said by the person carrying the powder into the building at the time he carried it in? Who was it carried it in; do you recollect?

A. Yes, sir.

Q. Did he say anything at the time?

A. He said he wanted to see one building blown up. He never had.

Q. He said that as he was carrying the powder in?

A. Yes, sir.

Q. You said you obeyed those persons who seemed to be in there without knowing who they were?

A. Yes, sir.

Q. Was there a considerable number of police officers about there?

A. Yes, sir.

Q. Enough to manage the crowd?

A. We had to manage them. There was not enough to manage the crowd, but we had to do the best we could under the circumstances. I don't wish to be understood that the crowd as a general thing were all noisy or intoxicated; but, as I said before, you would find business people there doing all they could to save property, and there were noisy ones among them.

Q. Shouting "Blow it up!" and the like?

A. Yes, sir.

56 Q. After these people were sent out of the building; who drove them out; the owners and clerks?

A. The officers ordered them out.

Q. By order of these unknown persons?

A. Yes, sir.

Q. Where did these unknown persons come from whom you supposed to be in authority, but didn't know; whether they came from the crowd round the building?

A. I believe there was not but one man there whom I remember that night to know him at that building, and I think that was Mr. Russell. He was there, and knowing him as I did, I took my orders particularly from him.

Q. What Russell was that?

A. The collector of Boston.

Q. Where did Judge Russell and the others come from; whether they came from that crowd?

A. I saw Mr. Russell there at the post-office.
Q. When they came into this building?
A. I didn't see Mr. Russell in the building.
Q. Was he standing among the crowd?
A. Yes, sir.
Q. There were others whose names you do not remember, and who appeared to be in authority; were they standing in the crowd?
A. The people who had charge of the powder were in the building.
Q. How many?
A. I could not say.
Q. A considerable number?
A. I should say there were.
Q. How many would you say now?
A. There might have been ten or twelve.
Q. Whether those people came from the crowd which surrounded the building, as far as you saw?
A. I suppose they had to come out of the crowd to get into the building.
Q. After these people were driven out of the building, then you say you drove the crowd back; how far back did you drive them, or did they go?
A. Out of danger.
Q. You called out the building was to be blown up?
A. Yes, sir.
57 Q. What followed then?
A. An explosion.
Q. From the place where they carried the powder?
A. Yes, sir.
Q. What was the effect of that explosion upon the building?
A. It didn't blow the building down. It blew off part of the wall, and the roof, some of it, blew off.
Q. And the floors?
A. Yes, sir.
Q. How long was this explosion after you began to drive the people out of the stores, to your best recollection?
A. Might have been, perhaps, half an hour.
Q. Did the wall on Milk street fall in or fall out towards the new P. O.?
A. Towards the new P. O., I think; I will not be positive. That was the only wall that fell, I think; I will not be positive which way it fell. It didn't all fall down.
Q. At the time when the explosion took place, how far was the fire from this store? The fire was coming along Devonshire street?
A. The fire was coming along Devonshire.
Q. How far was the fire from this store when the explosion took place?
A. I should say not more than two or three stores, possibly four; I could not tell exactly. You could not get to the fire that night; you could not get within two or three stores; it was too hot.
Q. Did you remain in that vicinity after the explosion?
A. No, sir; not all the time.
Q. Did you remain there until the fire reached the ruins left by the explosion?
A. I remained not in that locality. I remained farther down the street.
Q. But within sight of it?

A. Yes, sir; below the new P. O.

Q. You were in sight of it from the time you drove the people out until the explosion, and continued in sight of it until the fire reached the place?

Q. Yes, sir.

Q. Can you tell how long it took the fire to burn through those two or three stores and reach the ruins where this store was?

A. Half an hour to three-quarters. I could not give a correct idea. It might have been an hour, and might have been half an hour.

58 Q. At the time you intimidated or drove or induced this crowd to go back from the fire, when the cry was raised that powder was to be used there, will you state how many remained in and about the building, so far as you know—persons in charge of the blowing up, inside of your line?

A. I could not say how many there were; I didn't go back there again.

Q. You were in front of the crowd getting them back; were there a considerable number left outside back of you?

A. We left those we supposed were in charge of the powder; there might have been ten or twelve, and might not have been so many.

Q. What is your best judgment as to the number; will you say as many as that certainly?

A. I should not want to take my oath there were twelve; there might have been as many as that, and might have been more.

Q. Do you recollect anything said by the owner, or any person in charge, when you began to drive the people out, as to moving the goods or requesting time to do it?

A. If we could give him time he could get the most of his goods out; and they turned around, the parties who had charge of the blowing up, and told him the power was in the building then, and it would be dangerous to remain there.

Q. Did he state what time he could do it in?

A. He said it would not take him more than an hour or two to get his goods out.

Q. State whether you saw any persons there wearing badges not known to you to be officers?

A. There were.

Q. Did you know who they were?

A. No, sir.

Q. Did you know whether or not they were police officers?

A. I did not.

Q. They had no uniform except the badges?

A. Mr. Carpenter had on a police badge. I took the privilege of testing one of those gentlemen afterwards at a fire. He had a badge, and I asked him for it, and he refused to give it to me. He said he had authority to wear that badge. I went to Mr. Wooley, who I knew was on the committee on the fire department at the time, and he said he received authority from the city-hall at the time of the big fire and

59 he had worn it ever since; so by that I should suppose the men had authority to wear the badge, but I didn't know it at the time.

Cross-examination:

Q. (By Mr. HEALY.) Don't you know it is a common thing for persons to be furnished with badges at the city-hall as a passport in case of fire?

A. I never did.

Q. You never knew such a thing?
A. I never knew it before.
Q. Haven't you known it since?
A. No, sir.
Q. What station did you belong to?
A. Station 2.
Q. Where is that?
A. City-hall Square.
Q. Do you belong there now?
A. No, sir.
Q. Are you on the police force?
A. No, sir.
Q. How long since you left it?
A. Going on about three years.
Q. Where are you now?
A. An officer of the State.
Q. Are you certain you were in that building; you are not mistaken about what building you refer to where certain things took place?
A. No, sir; because I remember some remarks that were made afterwards—if they had blown down the one on this corner, it would save burning the post-office. This corner was not burned off, and this corner was burned off, and I have made the remark a great many times, if they had blown that building down it would save burning the post-office.
Q. When you went there you say you found persons moving goods out connected with the store?
A. I suppose so; they said they were.
Q. How many were they?
60 A. I could not tell. There were several people. I should be unable to state.
Q. Now, then, when they were ordered out because they were going to put powder in, were other persons admitted to the building except those who were connected with placing the powder?
A. None that I know of.
Q. How many were connected with getting the powder into the building?
A. I said I would be unable to state; might be more or less.
Q. How many did you know?
A. I could not state positively how many there were.
Q. How many kegs of powder were carried in?
A. I didn't see but one keg carried in.
Q. Did you see more than one man go in?
A. I saw one man.
Q. Do you know any others went in?
A. I could not say. I could not say there was any more powder in.
Q. Did you see more than one man go in with the powder?
A. Only one man went in with that one keg. I don't think that man had anything to do with placing it. There were other men in there.
Q. The men that were in there, were they the persons employed in the store to get out goods?
A. There appeared to be a party who pretended to own the goods getting them out, and there appeared to be a party there who officiated to blow up the building.
Q. Excluding those who belonged there, that were trying to get the property out, how many persons were there?
A. Might be twelve, and might be less.
Q. You mean not counting those who belonged to the store?

A. Yes, sir.

Q. Are you certain there were eight?

A. I should not take my oath there were eight, and I should not take my oath there were not; there might have been more or less.

Q. Did you see anybody there who were apparently endeavoring to destroy property wantonly?

A. No, sir.

Q. Did you see anybody engaged there that was not apparently engaged in good faith for the general welfare?

61 A. I supposed they all were.

Q. Those persons you spoke of as being noisy; did they do anything more than talk and shout, as persons do in a crowd?

A. No, sir; we always find them more or less noisy at fires. There were men of business who seemed to be more or less excited, but not doing anything vicious.

Q. How far were they kept back at this time from the building by the streets being roped off?

A. I don't think there was any rope put across there. The crowd was pressed back. I am not positive about the rope, but I am very sure there was no rope. The crowd was pressed down this way.

Q. How far down?

A. I could not say how far.

Q. Was there anybody in front of this building?

A. Yes, sir; and in the streets around the P. O., before the street was cleared. A man on foot could get through it comfortably, but a carriage could not go through it.

Q. This carriage was driven off?

A. Yes, sir.

Q. It had no difficulty in getting away?

A. They got through after a while, but they had more or less difficulty; they had to go carefully.

Q. You said you saw an officer carry in powder; do you know who the officer was?

A. It was officer Knight, of station 3.

Q. Did anybody help him?

A. I saw nobody help him.

Q. Do you know who the men were you supposed were authorized?

A. I saw no one that night I think I could recognize who took any authority there except Mr. Carpenter. I did not see him at that spot.

Q. Was Judge Russell there?

A. I saw him at the P. O., but not at that building.

Q. How many men did you hear give any order to those persons who were engaged with the powder?

A. I could not say but one; but there might be more. I heard an order given to one of the men to leave the building, and he turned round to the officers in the building and said he would like to

62 have time to get out his goods; and this man made the remark, the powder was in the building, and the building would be unsafe to work in while the powder was there.

Q. You heard but one man give an order?

A. There might have been more than one given. I can certainly say I heard one.

Q. Can you say you heard more than one?

A. I could not say I heard more than one.

Q. Then you don't know that more than one man undertook to assume command there?

A. I say there was more than one man there officiating. I should say there was more than one man in the building.

Q. Giving any orders, or taking any part?

A. Giving more or less directions to parties.

Q. How many could you say you heard giving directions?

A. I could not say how many there were in the building.

Q. How many were there giving directions?

A. That would be hard to state. They were all apparently men of business, and gave directions more or less. I could not say whether it all came from one man. There might be two men speak at once. I should not want to take my oath positively as to the number.

Q. You would not be willing to say there were three who gave any orders?

A. I should say there was more than three men there.

Q. Not there. But who gave orders as to what should be done?

A. There might not have been more than three.

Q. Should you be willing to testify positively there were more than three?

A. As I said, I heard one order given. I could not say there were three. There were men that received orders and seemed to be receiving instructions from the other parties.

Q. (By Mr. ALLEN.) The orders which Mr. Healy asked about, you understood to extend to giving any directions as to clearing the building or moving the crowd away?

Mr. HEALY. An order to move the crowd from the street is not an order to blow the building down.

Q. I am asking as to the orders. He has stated that he cannot state that he heard more than one order given. I now ask whether he means as to directing the blowing up of the building, getting the people
63 out, or driving the crowd back, or anything connected with the blowing up. How many did you hear give directions about that?

A. The order I said I heard given was for clearing the building; but perhaps I might say this one gave the others that were in the building orders, and they acted under his orders.

Q. Was that the case?

A. I should say that would be more probably the way.

Q. Then whether they gave orders to clear the building and clear back the crowd, &c., whether from other persons you did not hear some orders given in connection with that event?

(Objected to and excluded.)

Q. Whether you heard any cries before the word was passed to the crowd to retire?

A. I heard in other places talk about blowing up.

Q. Whether before the powder was carried in you heard any such cries?

A. Not until after the powder was carried into the building.

Q. The witness having stated that he heard but one order given to blow the building up, I will now ask him whether he heard other orders given by persons other than the owners and employees in the building in respect to clearing the crowd away or to ejecting the occupants of the building at that time.

(Objected to and admitted.)

Q. State whether you heard orders given by more than one person, not only as to the blowing up of the building, but the ejecting of the occupants, or moving away the crowd, or anything connected with it.

A. It is a pretty hard question to answer.

Q. Your best recollection?

A. With the excitement there was at that time there was a great many orders given by a great many different people.

Q. Did you hear them given?

A. I heard some of them given. I heard orders to clear the building and blow it up, and I heard the party tell the men who pretended to be the owners of the building that it would be unsafe to remain there. There might have been three or four men there at that time.

Q. At the time you had driven the crowd back, after the powder was carried in, can you state how many of those persons you thought were in authority went into the building at all?

64 A. Those people were out and in as they saw fit, arranging the powder. I say there might be a dozen and might not be so many.

Q. Now whether there was any others inside the line of officers who were trying to keep the crowd back aside from those who were connected with the blowing up?

A. Not after the owners went out of the store; not to my knowledge.

Q. And the best estimate you can give is there were ten or twelve or less than that?

A. Might have been that and might be less.

Q. Might have been more?

A. Might have been more.

Q. (By Mr. HEALY.) You said you were sent there by the captain?

A. No, sir; I said I reported immediately after the alarm struck at the station-house. I went first to the fire and remained in citizen's clothes. Then I left there and went to the station-house; and the captain told me to put my uniform on and report to the sergeant in charge of the fire.

Q. Who was the captain of the station?

A. Captain Vinal.

Q. Then you went by his direction?

A. I went there by his direction.

Q. (By Mr. ALLEN.) When you spoke of these people coming through the crowd, did you have any means of knowing whence they did come; whether through the crowd or not?

A. When the hack drove up, I saw one keg of powder was taken out of the hack, and I heard the remark, "Bring it into the building." I don't know where they came from. They were there in the building, and I had heard they were going to blow the building up.

Q. Do you know where these men came from? Where did you first see them?

A. I saw them in the building.

Q. Were they there when you got there?

A. Yes, sir.

Q. Did anybody come with this officer who brought the powder from the hack?

A. I don't know they did.

Q. At the time you first went there and you saw these gentlemen were in the store, how near the store were the outside crowd then?

65 A. You might say they were all around the store.

Q. Jammed up against it?

A. Not particularly jammed.

Q. Close up to it?

A. More or less around the building.

Q. Close to the store?

A. Yes, sir; some of them might be close to the store, and others ten feet from it.

Q. The edge of the crowd was close up to the building when you first got there?

A. Not so much in the street as they were by the post-office. There was more or less crowd, and it would be hard for a carriage to get down through the street.

Q. Whether the edge of the crowd extended up to the store that was afterwards blown up?

A. It would be hard to find out where the edge of that crowd was. As I say, there were more or less people about the building. The building was surrounded by the crowd.

Q. To the number of fifty or a hundred?

A. I don't know how many.

Q. A great many people?

A. Yes, sir.

Q. The distinction you make between the ten or twelve and the rest of the crowd is——

A. I mean those who I supposed were officiating in blowing up buildings, as I saw in other places that night.

Q. And the only way you can distinguish them is, as those who remained in the building after the others went away?

A. Yes, sir.

Q. At the time the powder was carried in, whether the crowd was all around the store then?

A. The crowd was more or less assembled. The crowd was not so much of a jam at that point as they were in other places, because the fire had not really got there and the crowd had not assembled very much. Take it where a building was burning, and the crowd pushed up around it. There was probably a hundred or more around the building, and there was a great many around the post-office. It was all lined clear up through.

66 Q. When you speak of the ten or twelve, more or less, you make a distinction between those who remained in the building and those who went away after the powder was put in?

A. Yes, sir.

Q. Before the powder was brought in, was there any distinction between those connected with the powder and those outside?

A. Those were people I supposed were officiating.

Q. What was there to distinguish them from the other members of the crowd?

A. They talked about blowing up the building, and seemed apparently to be making arrangements for the powder.

Q. In regard to the number of persons whom you say were conected in the building with the blowing up, whether they were more or less; whether you included in that the police and others who were driving the crowd back?

A. No, sir; I did not.

Q. How many were there?

A. I could not say how many officers there were there.

Q. About how many?

A. It would be pretty hard for me to say. There might have been twelve or more.

Q. You received your orders from the persons in the building?

A. Yes, sir.

Q. Your best recollection is, there were some dozen officers driving the crowd back?

A. I should say there might have been that; might be more and might be less.

Q. You stated you desired to correct your testimony as to the person from whom you received orders?

A. I stated that I received my orders from Captain Vinal. I have had my memory jogged since, that it was one of the lieutenants who was in charge that night.

Q. Who was the lieutenant?

A. Lieut. Burleigh.

Q. (By Mr. HEALY.) Did these officers form a mob?

A. No, sir.

67 *Testimony of John M. French.*

Q. (By Mr. ALLEN.) Of what firm are you?

A. French & Coffin.

Q. Did that firm exist at the time of the fire?

A. It did, sir.

Q. Where was your place of business?

A. 59 Milk street.

Q. What was your business?

A. Saddlery hardware.

Q. Fifty-nine is next door to this building that was blown up?

A. Yes, sir.

Q. Were you at your place of business that night?

A. Yes, sir.

Q. Until what time?

A. I came there about half past ten.

Q. You remained how long?

A. Until I was ordered out of the building by the parties who notified us they were intending to blow the corner up.

Q. What time was that?

A. I should say it was between twelve and one o'clock.

Q. What were you doing?

A. Packing goods.

Q. Had you got your goods pretty nearly packed?

A. A large portion of them.

Q. Who gave you your orders to leave, if you know?

(Objected to and admitted.)

Q. Was your store a part of the same building?

A. It was not.

Q. Who gave you your orders to leave?

A. I could not say.

Q. What was the condition of the street at that time?

A. There was quite a crowd there.

Q. What was the nature of the crowd?

A. They were under a great deal of excitement; passing back and forth.

Q. State whether they offered any violence or not?

68 A. They would dispose of goods about as fast as we could get them out of the door.

Q. What did they do with them?

A. I could not say.

Q. Ever seen them since?

A. We found a small portion of them.
Q. Where?
A. At the police station.
Q. How large a proportion of what was carried away?
A. All that we recovered were a few blankets.
Q. What was carried away by the crowd?
A. Blankets.
Q. How many?
A. Could not say. We removed between $3,000 and $4,000 worth of blankets with teams, and as we loaded them they would be snatched.
Q. By the crowd?
A. By the crowd.
Q. Can you give us any idea of the value of the goods that were snatched by the crowd?
(Objected to and excluded.)
Q. State whether it was a considerable quantity.
(Objected to and withdrawn.)
Q. In what manner did they take your goods?
A. By force.
Q. State whether you offered any resistance to them?
(Objected to.)
Q. Did they take those goods by force in spite of your resistance?
(Objected to, excluded, and plaintiff excepts.)
Q. Did this crowd shout and make a great noise?
A. It was somewhat noisy, sir.
Q. What did you hear them holler, if anything?
A. No particular things. They shouted and were noisy.
Q. Should you say it was very noisy?
A. At times.
Q. How many should you say there were there—in the street about that corner; in the immediate vicinity of that corner. I mean pressing about that corner, at the time you were ordered out of the building.
69 A. There were 300 people there.
Q. Did you see any one in that crowd that appeared to be orderly and quiet?
A. Yes, sir.
Q. How many of them?
A. I should think half of them were careful, quiet observers of what was going on.
Q. The other half were noisy and excited?
A. Yes, sir; moving about. When the team passed through there was a good deal of noise, and if a case of goods fell off they soon picked it up and scattered it.
Q. How soon did you go when you was ordered?
A. Within a few minutes.
Q. Where did you go?
A. Passed up Devonshire street.
Q. Did you hear any explosion?
A. I did.
Q. How soon?
A. I should think about twenty minutes.
Q. Did you see the explosion?
A. No, sir.
Q. Where was it; in that vicinity?
A. The sound came from that direction.

Q. What time of night was this?
A. I should think it was about one o'clock; might have been half past.
Q. Where was the fire then?
A. Coming down Devonshire street.
Q. How far from this corner?
A. About four stores in the rear of this building, I should judge.
Q. (By Mr. HEALY.) You don't know whether it was this particular store that was blown up when you heard the explosion. You only know it came from this direction?
A. That is all.
Q. Did you see any powder carried in?
A. I did not.
Q. You saw nobody taking any part in the blowing up?
A. No, sir.

70 *Testimony of John H. Coffin.*

Q. (By Mr. ALLEN.) You are Mr. Coffin, of French & Coffin?
A. Yes, sir.
Q. Were you at your store, that night, with your partner, Mr. French?
A. Yes, sir.
Q. You left when he did?
A. Yes, sir.
Q. Why did you leave that building?
A. We were ordered out.
Q. By whom?
A. Could not say who it was.
Q. How many persons?
A. I saw there was one came in who had a badge on his hat that said "engineer" on it. There was another one behind him I should say was a fireman.
Q. What did they say?
A. Said they had placed powder in the next store.
Q. What were you doing there?
A. Packing the goods.
Q. Was there a crowd in the street?
A. Yes, sir.
Q. What was the condition of that crowd?
A. It was noisy.
Q. Did you hear any particular exclamations in the crowd?
A. No, sir; I don't think I did. I was inside the store most of the time, but when we were getting out some blankets, the parties there called my attention to the stealing from the wagon, and I went out and found they were.
Q. How many persons do you think there was in the crowd?
A. Three hundred or four hundred; I should think quite a large crowd.
Q. Should you say it was an orderly or a disorderly crowd?
A. Part of it was orderly, and part of it was disorderly.
Q. Which seemed to have control; the orderly or disorderly?
A. I can hardly say. There was a good deal of confusion.
Q. Did that crowd appear to be under any control?
A. No, sir; it did not. I didn't see any one there that was controlling it.
Q. Did you see any intoxicated persons?

71 A. No, sir; I don't know that I did.
Q. Did you look for any?
A. I did not.

Testimony of Rufus Brown.

Q. (By Mr. ALLEN.) Were you in the building of Charles H. Hall the night of the great fire?
A. Yes, sir.
Q. What were you doing there?
A. Carrying out goods.
Q. What time did you get there?
A. I think about twelve o'clock I got there; I am not positive.
Q. How did you happen to go there?
A. My son was in the employ of the firm, and I went there to look after him.
Q. Did you find him there?
A. I did.
Q. What were they doing?
A. They were carrying out goods.
Q. How many were engaged in packing up; they were packing up as well?
A. I didn't stay up in the room with him. I took bundles of goods and carried down myself. I didn't stay there at all.
Q. How many were engaged there for Mr. Hall in doing that?
A. I could not say. I should think there were ten or twelve.
Q. How long did you work there, to the best of your recollection?
A. Not a great while. I think I carried down three bundles myself.
Q. Then what happened, if anything?
A. I was going up after another lot and a man came to the door and ordered all persons out of that building; they were going to blow it up. My boy was up-stairs, and I ran up after him to get him out. I did get him out, and we didn't go up again.
Q. Who was it that ordered you to go out?
A. I could not say who it was. My impression at the time was, it was one of the engineers of the fire department, but I may be mistaken.
Q. Was there more than one who spoke to you?
72 A. No; I don't remember of more than one.
Q. Where were you when he spoke to you?
A. I was going up-stairs, right from the sidewalk.
Q. Was he inside or outside?
A. He was right in the doorway.
Q. There were people outside?
A. The street was full. There were numbers of people going up and down all around.
Q. Where was the fire at that time?
A. I think the fire had crossed Franklin street—I know it had; because before I got down there I saw it on fire on both sides of Franklin street.
Q. It was several stores from Mr. Hall's?
A. Oh, yes.
Q. Did you stay there until the building was exploded?
A. No, sir.
Q. Where did you go?
A. I took my son with me and went home; I think it was about half past two.

Q. How long did you stay about there after the order was given to go out?

A. I didn't stay long; we went right away.

Q. You left the building right away?

A. Yes, sir.

Q. Left the whole place?

A. Yes, sir; and went home to South Boston; went round the fire and went home.

Q. What was the condition of the crowd in the streets when you left?

A. I could not tell you about that.

Q. Was there a crowd of persons then about the store?

A. Yes, sir.

Q. How many should you think? Let me ask you if the door out of which you carried the goods fronted on Milk street or Devonshire?

A. On Milk street. We carried the goods over into the new post-office, and deposited them there, and parties there received them and took care of them.

Q. Did you have an opportunity to look down Devonshire street, after you were ordered out, to see how the crowd was there on that corner?

A. I don't remember much about it.

73 Q. Where did those men come from that told you to go out?

A. That I could not say.

Q. You say they were standing about the door there?

A. This man came in the door behind me. I think he came right after me; I was going up-stairs after goods.

Q. Did you see any reason to make a distinction between him and the rest of the crowd?

A. He seemed to be a man of authority. I don't know that he had a uniform on.

Q. Where did you first see him?

A. Right in the outside there.

Q. Were there others standing round with him?

A. I could not say.

Q. There were plenty of them at the door?

A. Yes, sir; Mr. Hall was at the door when I first went in.

Q. He is one of the owners?

A. Yes, sir. I understood afterwards he was Mr. Hall. I didn't know him at the time.

Q. I mean outside.

A. This was right in the outside door.

Q. How many were standing round the outside door?

A. I don't think there was any.

Q. This crowd was a short distance off?

A. There was not any particular crowd about it that I know of. There was on Washington street; along by Weeks & Potter's, there was a perfect jam there.

Q. There was a good many folks there?

A. Yes, sir; but nothing to compare with Washington street.

Q. There is no necessity of comparing it with Washington street; were there a good many folks there?

A. Well, yes.

Q. Did they appear to be making a good deal of noise?

A. Nothing unusual for that night.

Q. Were they making a good deal of noise?

A. They were all around the fire.

Q. Did you hear them make any particular exclamation?

74 A. Nothing that attracted my attention except to blow the building up; they were going to blow the building up.

Q. You heard the crowd shout that at the building?

A. I can't remember about that.

Q. Did you hear anybody say that besides the man who told you to clear out?

A. All those that were engaged in carrying out goods; I understood that they were going to blow the building up, and I would have no more to do with carrying out goods nor allow my boy.

Q. I want to know if you heard any exclamation from the crowd, such as "Blow the building up." "Why don't they blow the building up?"

A. I might have; I can't remember; I could not say I did.

Q. How many persons should you say there were about the building, in front of the building on that corner?

A. People that night did not stay in particular places very long; they moved pretty rapidly.

Q. (By Mr. HEALY.) In what story were those goods?

A. I think they were as high as the second story.

Q. They hadn't anything to do with the first or second story?

A. I could not say whether they had or not.

Q. Do you know whether the first or second story of the building was occupied by anybody?

A. No, sir; I don't.

Q. How was the entrance of this building that you went up; was the stairway parted off?

A. I think it was.

Q. A flight of stairs went up to the third story, separate and distinct from the store on the lower floor of the building?

A. Yes, sir.

Q. (By Mr. MORSE.) Can you give an idea how long it would have taken to get those goods out?

(Objected to and allowed.)

Q. How long would it have taken, in your opinion, to get the goods out?

A. I haven't any idea of what goods were in the place. I have not been there before or since.

75 *Testimony of Charles Brown.*

Q. (By Mr. MORSE.) You are the son of the gentleman who just left the stand?

A. Yes, sir.

Q. You were an apprentice of Hall, Armstrong & Co.?

A. Yes, sir,

Q. How long had you been with them at the time of the fire?

A. About three months.

Q. Were you there that night?

A. Yes, sir.

Q. What time did you go there?

A. I could not say the exact time; I think it was between eleven and twelve o'clock.

Q. What did you do?

A. Carried goods from the top floor down two flights of stairs to the first floor.

Q. You packed up the goods in the upper story?

A. No, sir; I didn't pack any in the upper story; just took them from the upper story to the first floor.
Q. How long did you engage in that?
A. I don't know, sir.
Q. You stopped doing it finally?
A. Yes, sir.
Q. Why did you stop?
A. I was told to.
Q. By whom?
A. By my father.
Q. You didn't carry goods across to the post-office?
A. No, sir.
Q. You simply carried them down from the upper story to get them ready to move?
A. Yes, sir.
Q. Did you clear the upper story of goods?
A. I don't know what there was up there.
Q. Then you went out in consequence of what your father said?
A. Yes, sir.
76 Q. What did you see outside?
A. Saw a crowd out there.
Q. What were they doing when you went out?
A. I didn't notice particularly.
Q. Did you hear them say anything?
A. I suppose I did, but I don't remember.
Q. Did you hear them holler?
A. I don't know.
Q. Did you hear the crowd make any noise, any loud noise?
A. I don't know, sir.
Q. Your memory is bad, is it not?
A. I might have heard them make a noise, but I don't remember now what kind of a noise it was.
Q. Did you hear them make a noise? Why do you say you might have heard them unless you did?
A. I don't remember hearing them make any noise.
Q. You saw a large number of persons out there?
A. Yes, sir.
Q. How near the store were they when you went out?
A. In the street, on the sidewalk and all around.
Q. What did they appear to be doing?
A. They appeared to be looking at the fire. I didn't take any particular notice of them.
Q. Did they seem to be congregated there, or did they appear to be sweeping down and up?
A. They appeared to be moving back and forwards.
Q. Some of them standing still, I suppose?
A. Yes, sir.
Q. You say you don't remember whether you heard them shout anything in particular or not?
A. No, sir.
Q. I want to jog your memory a little bit. Have you not said you heard them holler? Didn't you hear them shout out, "Why don't they blow down that building"?
A. I might have heard them say so, but I don't remember; I could not swear to it.
Q. What is your best recollection?

77 A. That is the best of my recollection.

Q. What is?

A. That I might have heard them.

Q. What makes you think you might have heard them?

A. Because I think it is very likely they said so.

Q. Now I will ask you if you have not said within two or three days that you did hear them say so—more than fifty of them?

(Objected to. Allowed.)

Q. What is your best recollection about that? Have you not said within two or three days you heard a large number of the crowd holler out, "Why don't they blow up that building"?

A. No, sir; I said I thought they would be very likely to say so, or something of that kind.

Q. Didn't you hear them cry out something?

A. I might, but I don't remember anything about that.

Q. Your desire was to get away as fast as you could?

A. Yes, sir.

Q. (By Mr. HEALY.) Who did you talk with three or four days ago?

A. Mr. Morse.

Q. Did he press you a little hard to see what he could get out of you?

A. No, sir; not very hard.

Adjourned to Tuesday, at 9.30 a. m.

SECOND DAY, *Tuesday, May 4th.*

Testimony of G. A. ORDWAY, recalled.

Q. (By Mr. ALLEN.) After the crowd had been driven away from round the building of Armstrong & Co. to some distance, will you state whether any portion of the crowd or any persons were left inside the line of officers who were driving off; and if so, about how many, and where they were?

A. There were more or less people left inside.

Q. Your best judgment as to the number?

A. Might have been 20 or more; might have been less left inside the line.

Q. What is your best judgment? Besides those in the house, I mean.

78 A. I could not say how many there were in the house. There were some outside. It would be hard to state how many. They were scattered around. The main body of the people were pressed back, but more or less were left inside.

Q. Give your best judgment as to the number; not how many there might have been, but your best recollection; what you recollect, as near as you can.

A. I should say there were twenty there.

Q. Where were those twenty or more people?

A. They were back and forward; walking round inside of the line after we pressed the main body of the line back.

Q. Whether they were near the door of the building?

A. Around the building at times; walking around there.

Q. Whether they appeared to have anything to do with blowing up the building; to have charge or have authority; what did those people around the building appear to be doing?

A. They appeared to be doing as they wanted to. They were standing there; business men, you would naturally suppose.

Q. No matter what you suppose; could you see them do anything, or could you tell what they said?

A. No, sir.

Q. (By Mr. HEALY.) What did you leave the police for?

A. I can't tell exactly when I left it; two years ago last March I left the force.

Q. You left it pretty soon after the fire?

A. About two months.

Q. Did you leave it voluntarily?

A. I did.

Q. You were not discharged?

A. No, sir.

Testimony of Wm. L. Burt.

Q. (By Mr. ALLEN.) You were in Boston on the night of the great fire of November 9th and 10th?

A. Yes, sir.

79 Q. Where were you when the fire broke out?

A. I was at my house on Tremont street.

Q. How soon were you in the vicinity of the fire?

A. A very few minutes; I came down in a horse-car and got into the street before the fire was across the street.

Q. Did you, during that evening or night, have any conference with any of the engineers of this city?

A. I did.

Q. At about what time?

A. Two or three times, and finally left them at the city hall with the mayor and some of the board of aldermen.

Q. What was the first time you met with them, and where?

A. I was at the city hall three or four times trying to find some one who had some authority. I sent for the mayor twice, and finally, when the mayor got there, we got the city hall lit up and had an informal meeting in the mayor's room. Chief Damrell was there and the mayor; Mr. Allen, who was then in the water board, and five or six others; Alderman—I am very much troubled about recollecting names, I could not recollect his name.

Q. About what time was that?

A. It was then midnight or after. I have got a memorandum by which I can tell exactly, because the following morning I stated it all and had it all taken down. There was so much destruction of property I felt it was right to protect everybody I could. I made a statement which is preserved, and will tell you all the people's names, and everything that was done at the fire.

Q. Have you that statement here?

A. No, sir; I just came up and found that the word was left that the court came in at half past nine. I was obliged to disappoint them yesterday, being engaged on business for the government, and came right up.

Q. Was any action taken at the first meeting at the city hall in regard to the use of gunpowder in blowing up buildings?

A. Not at first; there was no one there to authorize it, no one to sign it. The city hall was not lit up, and we could not get the city officials together. We finally got them together, and then this matter of blowing up was discussed in a few words.

The examination of Gen. Burt was suspended at this point to allow him to produce his memorandum.

Q. (By Mr. ALLEN.) You are a member of the firm of Armstrong & Co., and owner of the stock of goods?

A. Yes, sir.

Q. At the corner of Milk street and Devonshire street?

A. Yes, sir.

Q. Did you have a lease of those premises?

A. Yes, sir; for ten years.

Q. State what was your business.

A. Chromo-lithography.

Q. How many floors did you occupy in the building in all?

A. We occupied the fourth and fifth, and part of the third for an office.

Q. What amount of stock had you in your store on the night of November 9th?

A. Between $52,000 and $53,000.

Q. How recently had an account of stock been taken before the fire?

A. It was taken a week before the fire.

Q. That was the amount of it?

A. Yes, sir.

Q. State whether any considerable quantity had been sold during that time?

A. There had been nothing sold, because it was large orders, wholesale.

Q. Did you do a wholesale or a retail business?

A. Wholesale, only.

Q. On the night of the fire did you go to your store?

A. I did.

Q. About what time?

A. Some time after twelve o'clock when I got down there. When I first went down I went to a friend's of mine, on the corner of Franklin and Devonshire street, and helped them until the fire reached them; then I went down to the store to see whether everything was all right there. I did not think then the fire would reach there.

Q. When you reached your store, in what condition did you find it?

A. When I got there everything was all right; some of the boys were there beginning to pack up.

Q. Nothing had been removed then?

81 A. No, sir.

Q. What was done after you reached there?

A. We went to work to pack up goods preparatory to moving.

Q. Did you remove any?

A. We removed a very few. We commenced moving them from upstairs down to the lower floor, preparatory to removing them from the building.

Q. So instead of taking goods from the building you packed them on the upper floor and took them to the lower ready to move them out?

A. Yes, sir.

Q. Did you have teams to move your goods?

A. We had teams to take them away after we got them down.

Q. How many loads did you take away?

A. We didn't take away one whole load.

Q. You kept at work packing and bringing down your goods until when? What stopped you, if anything?

A. The first notice we had of anything was some one came to the door and told us to leave the building, as they were going to blow it up.

Q. Do you know who it was?
A. No, sir.
Q. What was done then?
A. I was on the lower floor. I went to see what it was. Some one in the entry was hollering up stairs, "Clear the building; we are going to blow it up." The boys were upstairs, and I went up to have them all come down.
Q. You went up and saw everybody did get down?
A. I saw everybody was down who was upstairs before I came down. I didn't know but it would blow up before they got out.
Q. When they told you they were going to blow up the building did you look out into the street?
A. I looked out of the window.
Q. What did you see?
A. A large crowd of people on Devonshire street.
Q. Right in front of your store?
A. Yes, sir.
Q. Near to it?
A. Right round it.
Q. Did you cease removing your goods?
82 A. We got out of the building as soon as we could.
Q. You say a team was at the door partly loaded but not wholly loaded, when they came?
A. We carried the goods from there right over to the post-office. We brought up the team to the post-office.
Q. The team did not stand at your door?
A. It stood on the opposite side of the street. There was too large a crowd opposite the store for the team to stand.
Q. Did you go across to the team yourself at all?
A. No, sir, I did not. I was in the building until I was ordered out.
Q. Did you stand where you could look out of the window on to the crowd and see the men go across the street with the goods?
A. I could look downstairs, but could not look across the street.
Q. Was there anything but that crowd to prevent that team from coming to the building?
A. I don't know. I did not go down when the man got the team; I could not say. I did not go out of the building until I got word to go out.
Q. The question is whether there was anything but the crowd to prevent the team from coming up to the door and taking the goods from the door instead of across the street?
A. I don't think there was anything except the crowd. It could not get up to the door; there was such a large crowd there.
Q. Could you see the crowd or any portion of it so as to give any judgment as to what kind of a crowd it was; whether orderly, noisy, or boisterous?
A. I didn't see any orderly crowd that night; it was very boisterous what I saw.
Q. Whether you heard any shouts and cries from this crowd around the store?
A. I saw they were disorderly, because there was one fight there right by the door as we came out.
Q. As you came out after you were ordered out?
A. Yes, sir.
Q. Then you got all your men down and you left the store then?
A. I left the store.

Q. State your best judgment as to how long it would have taken you to have removed your goods from the store if you had not been
83 driven out by the cry of blow up the building; that is, from the time after you got them brought down as you had them from the place where they then were when you received this notice; how long would it have taken you to substantially clear your store?

A. We hadn't got them all down.

Q. You had a part of them down?

A. Yes, sir.

Q. Take them just as they were, in the condition in which they were when this notice was given you, how long would it have taken you to have cleared your store then?

A. I think with the force we had there we could have got out all we had there in a little over an hour, because if we used the elevator we could have got them all down.

Q. After your people and yourself went out, where did you go? About what time was it that you went out?

A. It was after midnight; I don't know exactly; it was between twelve and two, but I could not say.

Q. You didn't look at a watch or clock that night?

A. No, sir; I did not.

Q. You put it somewhere from twelve to two; were you one of the last who went out?

A. I was the last that went out from the upper story.

Q. You got all your help out before you?

A. They were all before me. I don't think I was the last one out of the lower part, but the upper part I was.

Q. When you went out of the door, where was the crowd?

A. When I went down the greatest part of the crowd had been forced back from the building down on Devonshire towards State street, and down the other way.

Q. Inside of this line, where you say they appeared to be forced back, whether any were left inside and towards the building?

A. Yes, sir; from fifty to one hundred.

Q. People left inside of the line of the crowd?

A. Yes, sir.

Q. Where were these people; whether they were near the store?

A. They were all around it when I came out. When I went in
84 there was a large crowd around the building, but when I came out there seemed to be a large open space; the people had been cleared away.

Q. Some remained inside, near the building, and the others were pushed back?

A. Yes, sir; that is why I noticed it more.

Q. What was the conduct of the crowd when you came out where you could see them?

A. About as it was when I went in, very noisy.

Q. It was after you came out that you saw the fight?

A. Yes, sir; they seemed to be young fellows, half crazy with drink. One of them had a bottle in his hand, and they were passing it to each other.

Q. They were fighting for it?

A. Yes, sir; they seemed to be; whether they were in earnest or not I don't know, but they seemed to be.

Q. Where did you go?

A. Over to the new post-office.

Q. How long did you remain there?

A. I remained there probably, I should think, ten or fifteen minutes, might be a quarter of an hour; I don't know the time exactly. I was very warm and I went home. The wind began to blow through the street and I was afraid I should get cold; I did get cold.

Q. You were perspiring from your labor?

A. Yes, sir.

Q. How far was the fire from your store when you went home?

A. The last I saw of the fire it was three or four stores down Devonshire street.

Q. Since this time state whether, after the fire was over, you made any attempt to discover who the perpetrators were; by the way, your store was blown up; you know the fact; you saw the ruins afterwards; what did you see?

A. All I could say was it looked as though it had been blown up; I didn't see it blown up. I was not there.

Q. Will you state, after that, whether you made any effort to find the parties who did it?

A. I did all I could; I tried to find out who did it, but I never was able.

Q. Did you give your consent in any way to have it blown up that night?

85 A. I didn't know anything about it until I was informed they were going to blow it up.

Q. That was all the notice you had—to get your help out as quick as you could?

A. Yes, sir.

Q. From that time whether you have tried to find out who did it, and what effort you have made?

A. I have tried to find out, but never could.

Q. What have you done, and whether you have tried to find them with a view of having them punished?

A. I did everything I could to try to find out who it was.

Q. Did you make inquiries?

A. I made inquiries round through different parties who I thought would be likely to know.

Q. From that time to this?

A. I have.

Q. Have you employed detectives and officers to assist you in this?

A. I have, and paid them.

Q. State whether you have ever been able to find out up to the time of this trial with certainty who any of the parties are?

A. I have not.

Q. You don't know how many persons were in the basement connected with the building?

A. No, sir; I did not go there.

Cross-examination:

Q. (By Mr. HEALY.) Did you occupy the lower part of the building?

A. No, sir; we were the only ones who occupied the building. They were fitting it up for a bank. The Bank of the Hide and Leather, I think it was, was going to occupy the lower part and rent it out for offices.

Q. The basement and first and second stories were unoccupied?

A. Yes, sir.

Q. Where were you when you were told the building was to be blown up?

A. I was down on the first floor.

Q. Did you ask the man what his name was?

A. No, sir.

86 Q. Why didn't you?

A. I had as much as I could do to attend to my own business without asking that.

Q. How did you know whether he had any authority to blow up or not?

A. He was dressed in the uniform of the city; I thought that was enough for me.

Q. As policeman or as fireman?

A. As policeman, I should think. He was standing right in the doorway.

Q. Didn't he have "Engineer" printed upon his hat?

A. No, sir.

Q. Did you remonstrate against its being blown up?

A. No, sir; I didn't make any remonstrance, but I thought the best way was to get the boys out from upstairs. I didn't want them to be blown up.

Q. You at once yielded to what you supposed was a matter of authority and took your men out without making any inquiries about it?

A. Yes, sir.

Q. Did you see any powder carried in?

A. I did not. I was not downstairs.

Q. You say you think it was blown up; what was the appearance that made you suppose it was blown up?

A. What made me think it might have been blown up was from the looks of it. The first intimation I had of its being blown up was from one of the insurance men who told me it was blown up. That was the first intimation I had of it.

Q. Then if somebody had not told you it was blown up, you would not have surmised it had been?

A. I don't know. I went home before it took fire or blew up or anything.

Q. You went home before it was blown up?

A. Yes, sir.

Q. Didn't you say you inferred from the appearance of it, it was blown up?

A. Afterwards, when I went down the next Sunday morning—I think it was Monday morning when I went down.

Q. After the fire had gone all through there?

A. Yes, sir.

Q. Were any of the walls standing?

A. Part of the walls were standing. The front and I think one of the side walls were standing.

87 Q. What could inform you at that time whether the walls had been blown up by powder or fallen from the heat of the fire?

A. The only thing that looked like it was those they said were blown up that night looked very much like it. The walls were all thrown down.

Q. Were not a great many walls down when they were not blown up?

A. Yes, sir; more where they were not blown up than there was where they were.

Q. Then your inference it was blown up was because the walls were not blown down any more?

A. The Devonshire street wall was down and the other was standing partly—on Milk street.

Q. It was because the walls were not down you inferred the building had been exploded?

A. I was not sure of it at all. The insurance men told me they were; that is the first I knew anything about it.

Q. You didn't go down on Sunday morning to look after your property in the post-office?

A. Not until Sunday afternoon. I think I went down to look round, but didn't get anywhere near it.

Q. What effort did you make to get in to see?

A. I think there was a policeman or somebody, so you could not get through the lines. I didn't get through until Monday.

Q. What effort did you make on Sunday?

A. I tried all I could.

Q. Did you make any application for a pass?

A. Not Sunday.

Q. On Monday you did, and you got through without any difficulty? Could you not have got through as easy on Sunday?

A. I didn't know anything about the pass arrangements until Monday.

Q. What kind of goods and property in this building did your stock consist of?

A. Mostly paper.

Q. Will you say you had $50,000 of goods there?

A. The paper was the principal; then there were stones and machinery.

Q. What part of it was machinery?

A. I could not say exactly; I think there might have been—
88 unless I looked at the account of stock that was taken I could not tell you—somewhere, I suppose, about $15,000; might be more or less.

Q. Who made that account of stock?

A. Our bookkeeper; there was a little over $15,000.

Q. What kind of machinery?

A. Presses; steam-presses.

Q. Large presses?

A. Yes, sir.

Q. You think you could have removed them?

A. I don't think we could have removed them.

Q. Another part you say was the stones?

A. Those could have been very easily removed.

Q. Where were those?

A. Upstairs; they could be brought down on the elevator.

Q. Had you taken down any on that?

A. We had not, because we did not have it going.

Q. What proportion of it was in stones?

A. About $6,000 of stones; $6,500.

Q. How much in paper?

A. It was manufactured up in pictures. The rest would be paper as it was manufactured up into pictures.

Q. That would be $30,000?

A. I could not tell unless I looked it over.

Q. You say you had between $52,000 and $53,000 of property there

$15,000 of presses and $6,000 of stones, or a little more. That would be $30,000 or upwards for paper?

A. There is a little over $29,000 figured up in the list here. I suppose the odd cents or the odd dollars may make a difference; somewhere near $30,000.

Q. When that stock was taken who took the articles?

A. The clerk; he and his son.

Q. Who fixed the prices?

A. I suppose he did, because he had it all to do himself.

Q. On what principle were these prices fixed?

A. What do you mean—that are carried out here?

Q. Whether they were at the price of the original cost?

A. At the original cost. On the stones, such work as had been
89 done on them was put down; what had been put out on them was put down. If you will allow me, I can tell you why this is taken. He put it on a sort of buying in the concern; he took the account himself to see how much there was of stock.

Q. How long had this stock been accumulating there?

A. It was inside of a year.

Q. How long had you been carrying on the business?

A. I think somewhere about nine months.

Q. Had you ever been in business before?

A. I never had.

Q. Where did you get this stock? Did you buy out somebody, or start anew?

A. Mr. Armstrong was the original man. They did not have money enough to carry it on, so I went in to furnish them the money to carry it on.

Q. How long had Armstrong been carrying it on?

A. I could not say, for I do not know.

Q. Have you not some means of knowing?

A. I should if I should ask him. He had been, I know, a good while.

Q. Hadn't he been carrying on the business for a great many years?

A. No, sir; he had been a very short time, because he could not carry it on. The business got so large they didn't have money enough to carry it on.

Q. That would not prevent their beginning on a small scale earlier?

A. They hadn't been in business a great while, probably not more than four or five months.

Q. How long had you known Armstrong before you bought in there?

A. I never knew him until just before I bought in.

Q. How did you make his acquaintance before going in?

A. I made it through Mr. Smith, of Smith, Hall & Co.

Q. Had you any acquaintance with this kind of business before you went in there?

A. I never did.

Q. Was not the stock that had accumulated there—chromos and stones and so on—would not that have become out of date, and therefore be much less in market than the original cost?

Q. If you ask Mr. Armstrong he can tell you better than I can.
90 I did not have anything to do with that part of the business; I attended only to furnishing the money; he attended to the other part.

Q. Then you are not a judge of the value of the materials at all?

A. No, sir; I am not.

Q. How many men had you employed in getting those goods down from your apartments?

A. I could not say exactly how many there were, but I should think there were ten or fifteen; might have been twenty.

Q. You took them down to the lower floor by the elevator?

A. No, sir; carried them down by hand.

Q. You had not used the elevator?

A. We had not used the elevator; we didn't know how much we should want to get out, and just began to work.

Q. This man, whoever he might be, who came and notified you that the building was to be blown up, how did he get at you and where did he find you? Where were you standing?

A. When I saw him he was standing in the door.

Q. Where were you?

A. The first time I heard anything about it I was up in the room.

Q. Not when you first heard about it, but when you spoke with him about it?

A. The first time I saw him I went out in the entry and saw him, but when I first heard about blowing up the building I was in the room.

Q. Upstairs?

A. No, sir; downstairs.

Q. When you were in the room downstairs at that time he came and told you he was going to blow it up?

A. No; because he was down on the lower floor in the basement.

Q. You didn't see him there?

A. I didn't see him until I went out, and then he ordered us all out of the building. I was in the room; I heard some one in the crowd outside, or some one else, say they were going to blow up the building.

Q. How many were in the room with you?

A. There might have been at that time three or four; they were going up and down stairs and getting things from upstairs to put into that room. There probably would not have been more than three or four, because they were going up and down.

91 Q. You think there were not more than three or four in the lower story when he gave you that notice?

A. On the first floor.

Q. When I speak of the lower floor I don't mean basement, I mean the upper story; that is where you mean?

A. Yes, sir.

Q. How many were there then?

A. There were some outside that came in to help. They did not all belong; they were all helping.

Q. All that were there were persons that were helping to get your stock out?

A. Yes, sir.

Q. Any where else in the building were there any persons except those who were helping to get your stock down?

A. I could not say.

Q. You do not know of any others, do you?

A. No, sir.

Q. You went immediately after you got your men out over to the new post-office, and then went away without waiting to see whether any powder went in?

A. I was too cold. I was sick with a cold, and didn't want to get any more. So I went home. I thought it would be a good while before the fire got there.

Q. You didn't feel very much concerned about your property, did you?
A. I felt pretty safe about it, and I went home and went to bed.
Q. Tell us of whom you made any inquiries as to who put the powder in?
A. I inquired of one of the insurance men; I inquired of Mr. Robbins, one of the common council, and various other parties.
Q. Who was the detective you employed?
A. His name, I think, is Benjamin Heath.
Q. When did you employ him?
A. I employed him a little while ago. It might have been two months ago.
Q. When did you first make inquiries as to putting powder in the building?
A. About two weeks, I think, or one week after the fire.
Q. How much did you pay Mr. Heath for the service he rendered?
92 A. Somewhere in the neighborhood of $200.
Q. What was your purpose in employing him?
A. I wanted to find out who put the powder in there, if I could.
Q. For what purpose?
A. I wanted to find out who the parties were.
Q. Why?
A. I wanted them punished in some way or other.
Q. You had ascertained at that time that there was something in the statute about following persons up, hadn't you?
A. No, sir; I don't think I had; I never heard that read until yesterday here.
Q. Your suit has been pending a good deal more than two months?
A. I think it was put in some time ago, but I don't know how long ago.
Q. When were you first talked with about it?
A. The first time I talked anything about it was shortly after the fire. I spoke to Mr. Rollins, and he said if we put a claim into the city they would be liable to pay it. That is the first I tried to find out anything about it.
Q. When were you first talked with in reference to this statute?
A. That was shortly after this suit was commenced.
Q. Do you remember when that was commenced?
A. No, sir; I could not tell.
Q. You began to talk in reference to this case a year ago last February?
A. I could not tell the date; it was some time ago it was first put in.
Q. You went into bankruptcy?
A. Yes, sir.
Q. At what time did you go into bankruptcy, and when was your assignee appointed?
A. I think it was in July.
Q. July, 1873?
A. 1873.
Q. Hadn't you talked with him about this along in the mean time?
A. I have spoken to him about it, but have not talked with him much. I was put in along with the rest of the claims.
Q. What proportion of your goods were carried out of the store when you were notified it was to be blown up?
A. I think there was somewhere about $16 or $1700 worth carried out.

Q. How did you fix that amount?

93 A. That was what was sold of them afterwards.

Q. You don't know how long it was after you went away and left the store after they had given you this notice before the fire reached there?

A. No, sir.

Q. I understand you to say that the man who took account of stock was a man who talked of buying your concern?

A. Our clerk.

Q. He talked of buying in and taking an interest in it?

A. Yes, sir.

Q. Then you have no reason to suppose he took it too high?

(Objected to.)

Q. Do you recollect whether you employed a detective name Button in this case?

A. I think he was employed by Mr. Heath. He was one of Mr. Heath's detectives. Heath was the head man.

Q. You have had communication with Mr. Button, Mr. Heath's assistant?

A. Yes, sir.

Q. At the time the notice was first given to you that they were going to blow up, you don't know who gave the notice?

A. I don't know. I heard it. I was there in the room and heard it said.

Q. Can you tell the manner of the person who gave you the notice; whether it was excited or quiet?

A. There were a great many that were hollering when I first heard it.

Q. Hollering what?

A. About the building being blown up.

Q. Where were those persons you heard?

A. That I don't know, where they were.

Q. Then the first notice you had of it was the shouts of a number of persons that the building was to be blown up?

A. Then I went out immediately, and this man at the foot of the stairs told us to clear the building, it was to be blown up?

Q. The first you heard of the blowing up was the shouts of a number of persons that the building was to be blown up; then you went into the entry and a man told you to clear the building because it was to be blown up?

A. Yes, sir.

Q. Did you know from the shouts whether it was your building or some other building?

94 A. That is what I went out in the entry to find out?

Q. You didn't know whether it was that building or the next building to it?

A. I did not until I went out into the entry and found this man.

Q. Was not the next building mined as well as yours?

A. I don't know.

Q. Then you don't know whether the man had reference to your building or some other building?

A. It might have been some other building; I went out into the entry to find out.

Testimony of Russell H. Conwell.

Q. (By Mr. MORSE.) You are an attorney in the city of Boston?

A. I am.

Q. Were you in the vicinity of the fire, the night of the great fire of Nov. 9th and 10th?

A. I was about there all night.

Q. You have taken sufficient interest in it to write a book on it since?

A. I have.

Q. I want to know if you were in the vicinity of the corner of Milk and Devonshire street; that is, the building immediately opposite the upper corner of the new post-office?

A. I was there several times during the night.

Q. Was that building blown up during the night?

A. Where the Equitable Building now stands was blown up that night. I have not heard the testimony here, so I don't know what building is referred to.

Q. That is the building where the Equitable Insurance Company now has its building. You say that building was blown up?

A. I didn't see the explosion, but I was there a moment before and a very few minutes after.

Q. What was the condition of it the moment you left it? Was it standing?

A. Oh, yes, sir; certainly.

Q. What was the condition when you came back a moment afterwards?

A. There were so many people and so much rubbish in the
95 street I could not describe it. I have tried to describe it and failed, and could not do it here.

Q. Was the building shattered?

A. The Devonshire side of it was very much shattered. I did not pass down farther than the corner of Milk and Devonshire.

Q. You say you left it a moment; did you hear an explosion?

A. I did.

Q. Where did you go?

A. I went back to Washington street, across Washington street into what I believe is the Milliken House passage-way.

Q. You went back far enough to be out of danger?

A. Yes, sir.

Q. As soon as you heard the explosion you rushed back again?

A. Yes, sir.

Q. I want to ask what the condition of the streets was when you left; how many persons were there about the building up to a moment before the blowing up?

A. I could not tell.

Q. How many should you say according to your best judgment?

A. I should understand you better if I knew the drift of the evidence, because you say people in the vicinity; do you mean at the building, or in the street, or in the lines?

Q. Were the crowd driven back—the body of the crowd; and, if so, in which direction?

A. The people that were with me were driven up Milk street towards Washington. I didn't see many go down Devonshire street.

Q. There was fire down in this way? (Indicating on plan.)

A. Yes, sir; and fire in this direction.

Q. Suppose a line is drawn from corner to corner of this Post-Office Square, leaving this square open; how many persons were there inside of that line at the time you left it, according to your best judgment?

A. I could not state.

Q. Were there a large number?

A. I know there were four persons with me I could name. There might have been, that went back with me, 15 or 20.

Q. You were not driven back by the officers; you went back because you understood there was to be an explosion?

96 A. Everybody about me was yelling there was going to be an explosion in a moment; and I thought if there was I would leave. Previous to that the main body had been forced back, by the officers. They stopped me once or twice, but I explained my purpose in being there, and they allowed me to go in.

Q. What was the purpose?

A. I was then writing for the newspaper press and also for the purpose of writing a book, and I was very anxious to hear that explosion for the purpose of describing it.

Q. Did you see people there who appeared to be preparing to blow it up?

A. I saw a great deal of confusion about the entrance on Milk street—the Milk street side of the building. I stood looking down Devonshire street towards the fire, and next to the building there were four persons or five I could name that were with me. We were at the building, and there was a great deal of confusion, of course, at all times; there was all about the fire elsewhere. The more I recall it the more distinctly I remember it; the running to and fro, and shouting they were going to blow up the building on the corner below, and afterwards, the cries about me changing, that they were putting powder in this building. I tried to get round to the Milk street end, but there were too many people on the corner of the sidewalk and I could not get there; they forced me back—the people that were standing there. I went round again and staid a few minutes again, until the cry was they were going to blow it up, and then I went up the street.

Q. How many persons about the door or in the building when you left it?

A. I did not go into the building. The persons who were with me went into the building.

Q. How many should you say there were about the door?

A. There must have been with me ten or twelve, I should think; I think there were more than that, but I desire to state it so I may be sure I am right.

Q. Those were inside or outside?

A. They went inside and went out.

Q. You say you think there were more than ten or twelve?

A. I should think there were. I have been called since I came into court. This matter has come upon me very suddenly.

Q. According to your recollection, there must have been more than ten or twelve?

97 A. There must have been. I met them at every turn as I went away from the corner.

Q. Those are persons in the street?

A. In the street and on the sidewalk; I did not go into the house.

Q. Inside of the line drawn by the officers?

A. I was inside of the line; I did not go outside of the line at all.

Q. You are speaking of inside of that line?

A. Yes, sir.

Q. Do you know who blew up that building?

A. I do not know, and have not been able to find out since.

Q. Did you see any one officiating there, putting powder in or appearing to be managing affairs?

A. There was so many who appeared to be managing affairs I could not swear to any of them.

Q. Did you see any who appeared to be managing affairs?

A. I saw three or four.

Q. What was the condition of the people inside the line about that building; were they quiet or were they noisy and excited?

A. I labor a good deal in the dark in this testimony from the fact that your questions are a good deal in the dark and I don't know the drift of your case. Do you intend to have me go out of this line or outside of this building? The people who were with me were a good deal excited and I guess I was; my brother was very excited.

Q. Most of them was practically crazy, were they not? Did you see anybody there who appeared to be officiating and appeared to have a cool head and know thoroughly what they were about, so far as you observed?

A. I saw a great many people who appeared to be officiating; in fact, I didn't see any person who didn't seem to be officiating in some direction or other. Whether they had authority to do so or not I didn't know then and don't know now.

Q. Did they appear to officiate as though they had authority or did they appear excited?

A. They hollered and made a loud noise; some of them screamed as loud as they could yell, the ones with me did.

Q. Did the others; did you hear others of that crowd?

A. I heard others in every direction, of course; there was a great tumult.

Q. There at that building?

A. At that corner and about the sidewalk and in the building.

98 Cross-examination:

Q. (By Mr. HEALY.) You say there were four with you?

A. Yes, sir.

Q. Were you there with those gentlemen for any riotous purpose?

A. No, sir, I should say not; I have explained my purpose.

Q. Those persons that were in the line, you think there must have been ten or twelve of them? Was there any disposition to excite a riot that you found there?

(Objected to.)

Q. Did you see any disposition on the part of those persons to wantonly or maliciously injure that building or that property?

(Objected to.)

Q. Did you see any act indicating a purpose to injure property wantonly?

A. The question puzzles me by the word wanton. I don't know what weight to give it, for in such a time as that I should not consider it was wanton to do most anything. I can state just what I saw, and the more I think of it the more clear it comes to my mind. I remember standing on the corner and going about the corner from the front on Milk street to the side on Devonshire with those people who were with me. We went up to Washington street and back, and the men who were with me were screaming loudly about the powder. One of them went into the building with the people. I know I thought they were carrying the powder in from what they said and did. Then they came out with a great hurrah and rush, and all screamed around me, and the people up

Water street and all around there said they were going to blow up the building, and we should be killed if we staid a minute, and all that, and made a great rush.

Q. Did you scream with the rest?

A. I presume I did. I don't remember of screaming with the rest, but I remember of stopping and writing something on the way.

Q. Those gentlemen who were with you screamed?

A. Three of them.

Q. Was not this screaming to notify the people they must go away for their own safety?

A. I could not tell; I could not tell what the purpose was. I know they screamed violently and excitedly.

Q. They said if they didn't get away they would be blown up and killed?

99 A. Yes, sir.

Q. You say some people went in who you thought were carrying powder; how many went in at that time according to your best judgment?

A. I should think there were twenty.

Q. When you thought they were carrying powder in?

A. Yes, sir; there was a rush to get in, and then the people were rushing out.

Testimony of Sidney Fisher.

Q. (By Mr. ALLEN.) Were you in the vicinity of the corner of Milk and Devonshire streets the night of the great fire, November 9 and 10, '72?

A. I was there from twenty-five minutes past one all night, in that vicinity.

Q. State whether you saw the building on the corner of Milk street and Devonshire street.

A. I saw it; I passed it.

Q. Was the building blown up?

A. That building was blown up that night.

Q. According to the best of your recollection, what hour?

A. My best judgment would be, between two and three o'clock. I heard all the reports.

Q. Where were you when it was blown up?

A. I was down in the vicinity of the new post office. I was around there watching my own building.

Q. Where was that?

A. 43, 44, 46, 48, and 50 Federal street.

Q. At the time it was blown up did you see people inside of the line drawn by the officers, and, if so, how many?

A. At times there were more or less; sometimes I might see ten, and I think I have seen as high as twenty or thirty. They seemed to be other than those who were breaking into and blowing up the buildings. That was my impression at the time.

Q. Besides those who were officiating to blow up buildings what were the others doing?

A. Thieving; that was their object; it struck me so. I saw them as I came up, between twelve and one; people with bundles.

100 Q. I am speaking of this particular corner?

A. This building, I don't think I saw any one carry anything away.

Q. When you said there was sometimes as many as twenty or thirty, you meant this building?

A. Round the building.

Q. State whether they appeared to be officiating in blowing up the building?

A. Some of them did.

Q. Was their condition noisy, excited, or quiet?

A. They were having rather a jolly good time; made me think more of boys, a good deal, than men.

Q. What did they do?

A. They were having a real good time; they were going to blow up buildings, and they didn't care where they did it or how they did it. That was the impression I gathered from it.

Q. Was that their condition at this building?

A. I saw no circumstances in regard to this building different from all the rest. I should say not.

Q. Do you mean to apply what you have said to this building?

A. I meant to apply it to that building with others. I knew a great many of the parties then, but I could not call them to mind now. I knew them on my own knowledge, and I was surprised to see them go into buildings in the manner I did. I thought it was careless.

Q. State whether they appeared to be acting in an orderly or disorderly manner.

(Objected to.)

Cross-examination:

Q. (By Mr. HEALY.) You say you know several of those gentlemen; what class of men were they?

A. Some of them were merchants in the city, I should think; I should judge they were. Gen. Burt was pointed out to me as one of the men who was very officious that night. Whether with this building I could not say now.

Q. Do you mean to give this jury to understand that men were there to blow up this building with an improper intent?

A. I should say so by all means. I could not make any other qualification.

101 Q. You think Gen. Burt went there to do mischief?

A. I do; I thought so then, and I think so now.

Q. Not to save property but to do mischief?

A. I could not go as far as that, but to blow up buildings without rhyme or reason.

Q. Did they manifest a purpose to destroy property for the purpose of destroying it?

A. I should not want to go so far as that, but I should say they used very poor judgment in doing it.

Q. These merchants, were they men who would join a mob?

A. I should judge not, myself.

Testimony of WILLIAM L. BURT resumed:

Q. (By Mr. ALLEN.) You have not been able to find the memorandum?

A. I have not found the original memorandum. I had the same with me at the time I was before the committee, appointed by the mayor, on the fire investigation. I find there substantially the same statement. In reading it, I find there is one page of it that is an entire transcript of what I had written out before.

Q. You have stated you came down to the fire and went up to the city-hall.

A. I went up to the city-hall and found it all dark; I made efforts to have it lighted up and to find some of the officers; found that some of the engineers had assembled there and had a short talk and separated.

Q. What was done next?

A. That was about midnight. About half past one or two o'clock I came up again. I had been there to get them to light the building, but I could not find any one who would take the responsibility of lighting it up. There was no one who would take the responsibility. At this time I saw, as I came up School street, the mayor's room was lighted. I went to the rear entrance and met an officer who said: "The mayor has come," or "has just come up with Chief Damrell"; and he took me right up to the mayor's room. Then we had an interview. I told him I had been there from the time the fire started, and, after two hours, it was evident the fire would be beyond control, and the whole city
102 would burn if it was left as it was, and there had got to be some efficient means taken to stop it. They asked me about the use of gunpowder. I said I had seen it used, and could use it, and was willing to take the responsibility; that somebody must. Mr. Damrell said he was opposed to it from the results he had read of the Chicago fire. I think he said he had been there himself and made an examination, and in a city like ours he hesitated to use it. The mayor said he had no authority; it rested with Mr. Damrell; and then asked me directly if I felt that I would be unwilling to undertake to blow up that part of the city. I told them if I had the authority I certainly should do it. I told the mayor if the fire was not checked he could look out of his window in the city-hall in the morning and see the shipping in the harbor; certainly as the fire was then going. He said he would give me the authority, and directed Mr. Damrel to go to his desk and write the authority for me to blow up buildings.

Q. Is this the paper?

A. That is a copy of it; the original of it is here. (Photolithographic copy put in.)

Q. Did he write other orders of a similar nature for other persons?

A. I did not suppose another one was to be written. I should not have taken that if I had.

Q. You would not have taken that if you had known another was to be written?

A. No, sir; I should not. I then asked some gentlemen who were present to take a particular district of the city. Mr. Damrell took the district between Summer street, towards the south, as far as Franklin street. Mr. Allen, chairman of the water board, took the district down towards the lower part of Federal street, running down by the Hartford & Erie depot and coming down towards Fort Hill. I cannot give the names of all, but the city was divided off on the spot, and a gentleman, who was a reporter for the Boston Herald, made a record of the persons and their respective districts. I was assigned to Federal and Devonshire streets, so I should be between the new post-office, old post-office, and subtreasury. I told them I had begun to move my mails out. At 11 o'clock I had stopped the mails at the New York depot. I had all my teams ready to move the mail. At that time I had them in the street. I locked up the subtreasury building and put it in charge of watchmen, and from that time until 7 o'clock the next morning no
103 one went into the Merchant's Exchange that was not passed in by a watchman. Capt. Damrell went in once. I took him in the

rear door, broke out a light of glass and helped him through. When we got this order, for the purpose of having policemen go with us, we had two policemen assigned to each one. I had two assigned to me, and went to Devonshire and Federal streets. At that time the fire had just crossed into what is called the Revere Bank building, having come across from the Cathedral estate. If we could have got the powder a half hour earlier we could have saved its crossing Franklin street at all on to this side. These policemen took their station at the head of that street. There was quite a crowd between us and the fire. They were directed to let no one pass in towards the fire, and we went up to reconnoitre and see what we should do as to blowing up buildings and see where to begin. We began as near up as we could, taking a building with the roof on fire. I went into the building with the powder and fuse. I think Capt. Green was with me.

Q. What building was that?

A. I can't tell you.

Q. What side of Devonshire street?

A. On the right-hand side. The first difficulty in Boston that night was we could not get the powder. If I could have had four hundred pounds to put into the first building to blow it up instead of tearing it to pieces, we should have made a success of it. We got no powder till we got it from the navy-yard. They were to send it from City Wharf but it did not come, or we did not get it. The first powder of any amount came from the Charlestown navy-yard about 2 o'clock. The powderman came over with his one-horse wagon, with his powder in packages of fifty or one hundred pound kegs. He drove up to the end of the street, and a policeman came up towards the fire and told me the powder had come, and I went and found the load near the fire-engines, which were playing. The driver had run away. As soon as they hollered the powder was coming they commenced to clear the street. The men and the fire-engines fell back. I took the horse and came by the engines into the head of Devonshire street and some way up the street. We took out one hundred or fifty pound packages in the woolen blankets and put them into a building.

Q. What building was that?

A. On the right-hand side of Devonshire. The building on that corner was not blown up. (Indicating on plan.)

Q. What corner?

104 A. Milk street; Milk street was where we formed the line. We first tried to stop the fire coming through towards Morton place and coming up towards Washington street. The line we marked out was the Old South Church, the new post-office building, the old post-office, and State street, to prevent the fire sweeping across the city in that direction, and we went at it. I took Federal and Devonshire streets for the purpose of using it efficiently, feeling that was the point where powder had got to be used if it was used to any advantage. I blew up that building. (Indicating on plan.) The fire had gone through the roof and had connected over with the building beyond; and we continued until we got to the corner. This was the building, back on this side, on the left-hand side as you come up Devonshire street coming towards Franklin. The first one we blew up was pretty well up into Devonshire street. That is the line it took (on plan) in burning through that street. It was at 4 o'clock, or about 4 o'clock, the fire had crossed Milk street into the old building down below the new post-office. I was through the new post-office building. The staging in the rear we tried to tear down to prevent its getting in. Finally I went and brought in

powder, and we put it in the building below the new post-office fronting on Congress street, and we blew that up so it fell, and fell towards the Congress street side. Then, as we got into the narrower streets down to the rear of the old post-office, Lindall street, I think, I put in about two hundred pounds of powder in the building opposite that. I knew the clerks were removing the mails. I went around into the building. While they were taking out the things I was in the post-office room. I know I told them the fuse would explode in about ten minutes. We were all of us blown flat, clear across the floor, some of us downstairs; but it blew up the building quite effectually so it fell the other way. The fire got under the roof of our own building, the top of the Merchants' Exchange building. I went upstairs after the fire was in and blew off the iron roof so the coping stones were thrown out and came down through the roof of the adjoining building. Then, on Kilby street, I put the powder in there so if the fire had got to the corner we should have blown that up. That was the last of the blowing up. It was then 6 o'clock, and Alderman Wooley came down and directed the blowing up to stop, and it did stop. The fire continued to burn, however, going down into Liberty Square. All that was burned after broad daylight, from store to store. The buildings were granite and the roofs were slate. At that time State street was full of engines so you could not go up and down the street. In fact all these narrow streets were. It was impossible to get any goods out of the way. The policemen didn't allow even the owners of stores to take anything but their books. Nobody could save anything. The only way they could save was two avenues were opened to Fort Hill and up on to the Common. Through these people saved goods; but all the goods that were put in Federal street and Congress street were burned. After we commenced the use of powder it was done with great care. There was not a person that night that was injured by an explosion. There were persons who were injured on Federal street, by the carriage factory and at the rear of this building that fell on Washington street, but wherever we used the powder that night there was not a person that was harmed. It was done as systematically as it could be. We burned about four tons of powder, and we had about three or four tons in State street. Every doorway on State street, from one end to the other, on the opposite side, was filled with powder at 7 o'clock the next morning; we had a large lot down in Dock Square waiting to come up. It came from the forts, from Chelsea, from the navy-yard, each man reporting when they brought it. That is a general statement of the use of it.

Q. At the time when Mr. Damrell wrote this order which you have in your pocket—you say it was written at the city-hall—can you recollect what officials of the city fire department were present besides Mr. Damrell? Which of the engineers were present?

A. There was only one. Mr. Damrell was present, and there was an assistant engineer, I don't know who. I labor under the difficulty of not recollecting names. Mr. Green I knew only by sight.

Q. Are you certain there was not more than one engineer besides the chief?

A. There might have been.

Q. What is your recollection of the number of engineers who were present at the time this order was given; I mean in the room?

A. My impression would be the chief engineer and some one of the assistants.

Q. Please state the conversation which took place as regards this matter.

A. It took place very rapidly.

Q. Try and recall if there were not other engineers present at this conference.

A. If you suggest anything that was said it might help me. I
106 don't recollect anything, only the fact that the chief engineer was there and, I think, some one of the assistants, but which one I don't know.

Q. You were not present at the meeting of the engineers in Federal street?

A. No, sir; I heard of it, but I was not there.

Q. Was it spoken of at the time this order was given?

A. I think they said they had a consultation, but whether that meeting was before or after, I don't know.

Q. Recollect whether Mr. Green was there with the chief?

A. That is what puzzles me in regard to Assistant Green—when I met him if I didn't meet him at the city hall, to begin with.

Q. Was there an engineer by the name of Swift?

A. I should not recollect him by name.

Q. Do you know one named Smith?

A. I didn't know him by sight.

Q. You are not positive whether any other engineers than the chief and Mr. Green were there?

A. I don't say that Green was there. I am positive that the chief engineer was there and some one of the department, and I say my impression was that Capt. Green was there from the fact that I met him some time that night, and I cannot fix it where I did meet him.

Q. In regard to the staying of the fire at the point on Milk street and Devonshire street—this corner building—whether that did stay the fire at that point?

A. I think it did. I think we stopped it here first and checked it from going through there so it did not get above the new building on the corner, what is called the Rialto building, which was then unfinished. We stopped it there so we got it into control. This building helped us. The blowing up of this building helped us. It got across on to the corner of Congress and Water streets by the merest accident. I think that helped very much.

Q. Now, in regard to the condition of that new post-office, was it not damaged down here a great deal more than here?

A. Yes, sir.

Q. This you didn't blow up?

A. I blew up the rear of that building; that was Mr. Potter's building. I went in and blew him up, and blew his safe clear across the street.

The new post-office building was damaged on those two corners
107 very much by the burning of the Simmons lot. Those two corners were damaged to the amount of $178,000. This corner was damaged very little.

Q. I understand you to say while you were with the chief, at the time this order was given you, a line was designated you where you should go?

A. It was to each one, and two officers were assigned to me as policemen. I don't know their names, but they went with me and took charge of the two streets and were very faithful.

Cross-examination:

Q. (By Mr. HEALY.) You know the building in question; was that within your district?

A. Yes, sir; entirely, exactly in my district. It was a very prominent point.

Q. Then that was under your supervision all the time?

A. I so considered it; at that time until morning there was no question as to it, and there was no question during the night as to obeying our orders, even to assigning engines and doing everything.

Q. Who made that assignment of police officers?

A. It was done, my impression is, by the chief of police, right there in the room. At any rate, it was done by the police department, the chief or assistants. We sent to the second station, and the clerk of the chief was in there and we had some one who came in and gave us those officers. They had already put in a large number of the supernumerary officers who were looking for the people who were stealing. As they came into the second station each of those officers was taken and detailed for this new service under this new arrangement. Who was there, whether the chief or not, I don't recollect.

Q. When this powder was brought in from the various places from which it came, in whose custody was it put?

A. They reported to me and to Captain Green, who was there.

Q. Who had the custody of it?

A. The city themselves sent; Mr. Damrell said he would send. The city's powder was sent in some way from Central or City Wharf, I don't recollect which.

Q. It was somewhere where you could have access and get it; in whose custody was it?

A. I don't know the person who had the city powder. The navy-yard powder I had and the Chelsea powder I had. It was some one connected with the fire department.

108 Q. Did anybody have anything to do with the blowing up of any of these buildings except the parties who were designated to that duty?

A. There was not a building blown up in that district that night that I did not know of. I will not say gave an order, because it was done by consultation, but the arrangements for blowing up the whole of it, clear down to State street, was done in each instance with my personal knowledge and, you may say, direction.

Q. There was no indiscriminate mob blowing up?

A. There was nothing of the kind. In the blowing up of buildings there was a question as to the amount to use; a question as to which building to take first. The actual use of gunpowder that night was not in hap-hazard hands. Nobody set a fuse in Boston that night who was not authorized to do it. Captain Green had a fuse and I had one; there were only a few that had fuses at all. Those men who knew about the length of fuse for the time to burn were the only ones who set one on fire. Some learned more about it after seeing it done. George O. Carpenter, I recollect, had one. There was no indiscriminate blowing up that night.

Q. Was there any injury done to this building in question by any outside mob or assembly?

A. You mean in breaking in? We broke into the store; we broke the doors out.

Q. I am speaking not of you.

A. You mean outsiders?

Q. Had they any means, any powder to be got at?

A. There was nothing that was not under the instant control of us at any time; and in going into buildings the orders were very strict about

it. Not over two or three went into the building. Everybody run as soon as they saw one hundred pounds of powder even with a woolen blanket over it. It cleared the streets itself. The policemen gave the word when the powder came up. We broke into that store. I should say four persons went inside of the store to make arrangements for blowing up, and after the powder was finally placed, there was but one person that came out.

Q. Are you able to state how many went in on the first floor of that store? You put powder in the basement?

A. In the basement and, I think, some on the first floor in the rear.

Q. In two different places?

A. I think we put the powder in two distinct places and fired it from below.

109 Q. Is it your recollection that any more than four or five persons went in after you began to put the powder in?

A. I think not. Immediately before, I think, they were taking out the goods.

Q. Did you see Col. Conwell, who has testified here?

A. No, sir; I did not, to know him. We prepared these different places before we got the powder. But we could not get what we wanted to use. If as soon as we got into a store and got ready we could have placed the powder there, we could have accomplished all we started to do.

Q. I understood you to say, in answer to Mr. Healy, that the question of what buildings to blow up was under discussion; under discussion between whom? Were there any engineers with you there?

A. Capt. Green and the men who were engaged in blowing up; we would fix upon blowing such building next, and it was done; each one attended to it.

Q. You say we fixed?

A. We finally passed it up by a line of men clear back to State street. After we had fixed upon the building, this was passed up to that point and put in.

Q. You say "we" fixed; who do you mean by "we"; did you have any other engineers with you besides Engineer Green?

A. He had some one assisting him. Whether an engineer, or simply some one connected with the fire department, it would be difficult for me to tell.

Q. Did you, at any time after you began to consult about the blowing up, meet with three engineers?

A. The chief engineer did not come into our department that I know of until the Merchants' Exchange was on fire.

Q. Did you at any time consult with any three of the engineers of the city after you started the scheme of blowing up?

A. I don't think we did. I had in my mind distinctly what to do and I stuck to it until we got it done.

Q. You used your own discretion entirely?

A. I intended to. I intended to keep that line plum up if I could, and not let it get into the new post-office building, and not get over into this part of the city.

Q. How effectual was the explosion of this building?

110 A. My impression is that it was not as efficient as some of the rest. I think it blew the stones out.

Q. And left the walls standing?

A. Left the walls standing, and did not blow them down. In fact, it was not desirable to do that on the front. It broke the rear walls,

which we wished to do; threw the stories up and filled them with debris and the fire burned upon the inside, which was a relief to us.

Q. At the time this was blown up how near was the fire?

A. The fire was both sides of Devonshire street, following down across Federal street below, and it was coming this way on a line nearly up to Morton place; I think through there, down across Federal street. That was between 3 and 4 o'clock.

Q. If this building had not been blown up could it have been saved from conflagration?

A. By no human possibility. It was not among the things that were possible.

Testimnoy of Edward Spellman.

Q. (By Mr. MORSE.) You were employed by Armstrong & Co., or Mr. Hall, the night of the great fire?

A. Yes, sir.

Q. How long had you been in their employ?

A. Ever since he started business; about nine months.

Q. What did you do?

A. Worked round the shop doing anything he asked me to do.

Q. What time did you arrive at that store on the night of Nov. 9th.

A. Between 11 and 12.

Q. Who was there when you arrived there?

A. Mr. Hall was there, and some of the employees that worked for him.

Q. What did you do after you arrived?

A. Helped carry some goods downstairs to move across to the post-office.

Q. Did you continue some time doing that?

A. For about a half hour.

Q. What then took place?

A. The last time I was going downstairs a man told me to get out of the building; they were going to blow it up.

Q. Who was it?

111 A. I don't know the gentleman.

Q. Did you go out of the building?

A. Yes, sir.

Q. Whether you went out first or last of the employees of Mr. Hall?

A. I was about the last that went out.

Q. At the time you went out of the building did you see anybody round the store.

A. Probably 15 or 20 persons round the door.

Q. Were they employees of Mr. Hall or strangers?

A. They were strangers to me.

Q. Outside of those 15 or 20 men was there a space?

A. There was a space, and a crowd back of the space.

Q. When you went out what were these 15 or 20 people who were standing round the door doing?

A. Not doing much of anything.

Q. Whether they were quiet or noisy?

A. They seemed to be kind of noisy.

Q. Whether you heard any outcries or shouts?

A. I heard once they sung out, "Blow up the building."

Q. From this crowd round the door?

A. Yes, sir.

Q. What was the condition of the crowd outside the line, outside the open space; whether they were quiet or noisy?
A. Noisy.
Q. Where did you go after you left?
A. Went down to Portland street.
Q. Did you stay until the building was blown up?
A. No, sir.
Q. You didn't see it after you left?
A. No, sir.
Q. Did you stay in the vicinity for any length of time?
A. Probably 20 minutes afterwards.
Q. After you were driven out?
A. Yes, sir.
Q. And it was not yet blown up?
A. No, sir.
Q. Then you went away?
A. Yes, sir.

112 The writ of error in this cause was duly entered in this circuit court at the October term thereof, A. D. 1875, when and where the parties appeared by their respective attorneys, and thence this cause was continued to this present term, when the same is set down for hearing and fully heard by the court, and now, after mature deliberation thereon had, it appearing to the court here that in the record and proceedings aforesaid there is no error, it is considered by the court, to wit, September 2d, 1876, that the judgment of said district court be and the same is hereby affirmed with costs, that the said plaintiff take nothing by his said writ, and that the said city of Boston, defendant in error, recover of the said Alexander G. Bowditch, assignee as afore said, plaintiff in error, its costs of suit in said district court, taxed at * * * , and its costs of suit in this circuit court, taxed at * * * .

113 A true record. Attest:

JOHN G. STETSON, *Clerk.*

114 The following is the opinion of the court in said cause, in accordance with which judgment of said circuit court was entered therein on the second day of September, 1876, namely:

Opinion of the court.

ALEXANDER G. BOWDITCH, ASSIGNEE, IN ERROR,
v.
THE CITY OF BOSTON.

CLIFFORD, J.:

Firewards, or any three of them, present at any place in immediate danger from a fire, and where no firewards are appointed, the selectmen or mayor and aldermen present, or in their absence two or more of the civil officers present, or in their absence two or more of the chief military officers of the place present, may direct any house or building to be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire. (Gen. Stat. Mass., chap. 24, sec. 4, p. 177.) Whenever it is adjudged at any fire by any three or more of the engineers present, of whom the chief engineer, if present, shall be one, to be necessary, in order to prevent the further spreading

of the fire, to pull down, or otherwise demolish any building, the same may be done by their joint order. (Ords. of City, sec. 11, p. 237.)

Damages are claimed by the plaintiff as assignee in bankruptcy of the estate of Armstrong & Co., for the destruction of the stock of mer-
115 chandise, fixtures, machinery and tools of the bankrupt, situate in a certain described building in said city, by the authorities of the city during the time of what is known as the great fire. Compensation for the alleged injury having been refused, the plaintiff, as such assignee, instituted the present action of tort to recover for the value of the property destroyed, the writ containing six counts. Four of the counts are founded upon the statute of the State, which provides that certain public officers may, under certain conditions, direct any house or building to be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire.

1. Count one alleges that the order to demolish the property was given by the mayor and aldermen.

2. Count two alleges that the order was given by three firewards of the city.

3. Count three, that it was given by two of the civil officers of the city.

4. Count four, that it was given by two of the chief military officers of the place.

5. Unlike those which precede it, count five claims to recover upon the ground that the property was taken for public use without just compensation.

6. Cities and towns are by the statute of the State made liable, in certain cases and under certain conditions, to persons whose property is injured or destroyed by persons engaged in a riot, and the sixth count of the writ is founded upon the eighth section of that statute. (Gen. Stat., chap. 164, p. 816.)

Service was made and the corporation defendant appeared in the district court where the suit was brought and pleaded the general issue, denying every allegation of the several counts of the declaration. Subsequently the case came to trial, and the court at the close of the plaintiff's case instructed the jury that the evidence introduced by the
116 plaintiff was not sufficient to warrant the jury in finding a verdict in his favor, and directed a verdict for the defendant, to which instruction the plaintiff then and there excepted. Judgment was accordingly rendered for the defendant, and the plaintiff sued out a writ of error and removed the cause into this court.

Since the case was entered here the same has been fully argued, the error assigned being that the district court erred in directing a verdict for the defendant. Instead of that the proposition is, that, inasmuch as the evidence was in its nature legally admissible, its sufficiency to prove the issue was for the jury, and it was error in the presiding justice to withdraw it from their consideration. Authorities undoubtedly may be found in which it is held that it is necessary in all cases to leave the question to the jury if there is any evidence, even a scintilla, in support of the issue, but it is now well settled law that the question for the judge in such a case is not whether there is literally no evidence to support the issue, but whether there is none that ought reasonably to satisfy the jury that the fact sought to be proved is established. (Law Rep., 4 exch., 39.) Judges are no longer required to submit a case to the jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such a character

that it would warrant a jury in finding a verdict in favor of that party. (Law Rep., 2 Privy Council Appeals, 335.)

Most of the modern decisions are in accord with the views expressed in that case, and they show the rule to be that there is, or may be, in every case, before the question is left to the jury, a preliminary question for the judge, not whether there is literally no evidence to support the issue, but whether there is any upon which the jury can properly proceed to find a verdict for the party producing it, upon whom the burden of proof is imposed. (Jewell v. Parr, 13 C. B., 916; Toomey v.
117 Railroad, 3 C. B., N. S., 150; Wheaton v. Hardisty, 8 Ell. & Bl., 266; Schuchardt v. Allen, 1 Wall., 369; Merchants' Bank v. State Bank, 10 Wall., 637; Improvement Co. v. Munson, 14 Id., 448; Pleasants v. Fant, 22 Id., 120.)

Apply that rule to the case before the court and it is clear that the ruling of the district court was correct, unless the views of the plaintiff can be sustained in regard to the causes of action set forth in the fifth and sixth counts of the declaration. Prima facie a municipal corporation is not liable for the trespass or wrongful acts of their officers, but they may become liable under special circumstances, as where the act, if not wholly ultra vires, was expressly authorized by the governing body of the corporation, or where, without special authority, it was done by its officers in the scope of their duties or employment, and has been ratified by the corporation. Municipal corporations, or certain officers thereof, are sometimes appointed by charter or statute agents to judge of an emergency and to perform or direct the performance of acts which a private individual would do at his peril. Acts authorized to be done to prevent the spreading of fire may be put as an example of the kind. Officers of such corporations are accordingly sometimes authorized to pull down or destroy buildings to stay the progress of fire, and such corporations are in certain cases and under certain conditions made liable by statute for the value of the property injured or destroyed for the purpose, but the liability of the municipal corporation in such a case is purely statutory and never existed at common law. Hence, in order to recover for such a claim the case must be clearly proved, and be fairly brought within the statutory provision. Consequently it is decided that where the statute allows such a recovery only when a building is demolished by the order of three firewards, a destruction of it by the order of one of those officers will create no liability
118 against the corporation. Engineers in this State have the same authority in regard to the prevention and extinguishment of fires, and the performance of other offices and duties in respect thereto, as firewards, and the same rule applies in determining whether or not the corporation is liable for their acts. (Gen. Acts 1850, ch. 262, sec. 3; Gen. Stat., chap. 24, sec. 41, p. 181.)

Claims of the kind, whether the property was injured or destroyed by the act of the firewards or engineers, must be brought strictly within the statute creating the liability, or the corporation will not be held responsible. Statutes of the kind cannot be modified by a by-law, as for example where the statute allowed such an order to be given by three firewards, and the by-law authorized one to exercise it in urgent cases, the supreme court of Massachusetts held that the by-law was void; that the injured party could not recover. (Coffin v. Nantucket, 5 Cush., 271.) In order to charge the corporation in such a case, the remedy being given only by statute, the case must be brought clearly within the true intent and meaning of the provision creating the liability. (Taylor v. Plymouth, 8 Met., 465; Hafford v. New Bedford, 16 Gray, 302.)

Houses or buildings situate at a place in immediate danger from a fire may, by the order of three firewards, be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire. Property within such a house or building, it may be admitted, is within the scope and meaning of the provision, and the succeeding section provides that the owner shall be entitled to recover a reasonable compensation from the city or town, if such pulling down or demolishing of the house or building was the means of stopping the fire, or if the fire stopped before it came to the same, unless the
119 house or building pulled down or demolished was the one in which the fire first broke out, in which event the provision is that the owner shall receive no compensation. (Gen. Stat., chap. 24, sec. 5, p. 176.) Cities and towns are liable to that extent and under those conditions and not otherwise. Unless, therefore, the evidence offered by the plaintiff at the trial brings his case within those provisions, he cannot recover in this action. Such an action cannot be maintained unless it appears that the house or building was pulled down or demolished by the order of three firewards or three engineers, or by the joint order of some one of the other classes of officers named in the fourth section of that act.

Much discussion of that question is unnecessary, as it has already been decided by the supreme court of the State. "The plain intent of the statute is that no house or building shall be demolished unless it shall be judged necessary by three firewards, or by the other officers authorized to act in their absence, or where no firewards have been appointed." (Ruggles v. Nantucket, 11 Cush., 436.) Nothing is left for construction since that decision in disposing of the cause of action set forth in the first four counts in this case, as the court there say, "It is the united judgment of the officers to whom the power is given, acting upon the immediate exigency and determining the necessity which is contemplated by the statute. Its language is capable of no other reasonable interpretation. It is a joint authority expressly given to the officers designated, acting together, and cannot be exercised by a minority or by any one of them," and the court add what it is important to observe, that it is not sufficient that a general conclusion or judgment was arrived at by three firewards, or the other officers mentioned, that it was necessary to destroy some buildings in order to put a stop to the further extension of a fire. They must go further. They must determine upon the particular house or building which they shall ad-
120 judge necessary to be destroyed for the purpose, as this cannot be left to the individual judgment of any one of the firewards. Federal courts in construing State statutes follow the decisions of the State, and in general regard the construction given to the statute by the State court as binding as the text. (Leffingwell v. Warren, 2 Black, 603; Loring v. Marsh, 2 Cliff., 319: McKeen v. Delaney, 5 Cr., 22.)

Tested by these rules, it is very clear that the plaintiff failed to prove any right to recover under the first four counts of the writ. Evidence was given upon the subject, as, for example, the chief engineer, Damrell, testified that at a meeting of three or four engineers with him, it was voted, if, in the judgment of the chief engineer, gunpowder could be used in any way to stay the conflagration, the board were ready to cooperate, but he states that it was contrary to their judgment that gunpowder was used. Two engineers, Green and Smith, were designated to act with the chief engineer, but he testifies that he and his associates did not designate any building to be destroyed, and that they had not

decided at that time to blow up any building. Persons subsequently met in consultation at the mayor's office, but three engineers were not present. Damrell was there and perhaps Green, but no others of that class of officers. According to the testimony of William L. Burt, he, said Burt, was assigned to the district where this building was situated by the mayor and chief engineer, with authority to use gunpowder at his discretion, and it appears that Burt blew up the building with the concurrence of Green, but no other engineer ever assented to the act. All that is proved is that one engineer gave the order, which is clearly insufficient to support the action, the rule being that "three engineers must determine upon the particular house or building which they shall adjudge necessary to be destroyed for the purpose." In the case
121 at bar the evidence fails to show any joint judgment of three firewards or engineers as to the necessity of destroying the building which contained the property, the value of which the plaintiff seeks to recover in this action.

2. Private property under the constitution of the State cannot be taken from the owner or be applied to public uses without his own consent, or that of the representative body of the people, and the provision is that whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor. (Gen. Stat., p. 17.) Viewed in any light, the evidence had no tendency to show that the property destroyed was taken by the corporation for any use, public or private. Enough appears to show that the property was destroyed, but there is no evidence whatever that the order for its destruction was given by any one who had any authority to represent the corporation in that regard, which is all that need be said upon the subject.

3. Nor can the action be sustained under the sixth count, for the reason that the evidence introduced has no tendency whatever to show that the persons who destroyed it were engaged in a riot. Instead of that, the tendency of the evidence is to show that the order for the destruction of the building was given by William L. Burt, with the concurrence of one engineer, and it is not charged even in argument that they were engaged in any riotous proceedings. Suffice it to say that the charge of riot is wholly unsupported by the evidence, and that there is no evidence in the case to support the sixth count of the writ which deserves any consideration.

Judgment of the district court affirmed with costs.

122 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, hereby certify that the foregoing is a true copy of the record and of all the proceedings (including the opinion of the court) in the cause of Alexander G. Bowditch, assignee, plaintiff in error, v. The City of Boston, defendant in error, in said circuit court determined.

123 In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this thirtieth day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[SEAL.] JOHN G. STETSON, *Clerk.*

124 *Bond on writ of error.*

Know all men by these presents that we, Alexander G. Bowditch, of Boston, in the district of Massachusetts, assignee of the estate of Charles H. Hall, as principal, and Daniel E. Chase, of Somerville, in said district, and Levi L. Tower, of said Somerville, as sureties, are held and firmly bound unto the city of Boston, a municipal corporation, duly established by law, in the district of Massachusetts, in the full and just sum of one thousand dollars, to be paid to the said city of Boston, certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the first day of November, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately at a circuit court of the United States within and for the district of Massachusetts, in a suit depending in said court between said Alexander G. Bowditch, assignee of the estate of Charles H. Hall, bankrupt, of Boston, in said district, plaintiff, and the said City of Boston, defendant, judgment was rendered against the said Alexander G. Bowditch, and the said Alexander G. Bowditch having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Boston, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Alexander G. Bowditch shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

A. G. BOWDITCH. [L. S.]
DANIEL E. CHASE. [L. S.]
L. L. TOWER. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN C. LANE, to L. L. T.

Approved.

G. F. SHEPLEY,
U. S. Circuit Judge.

A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

(Indorsement on cover:) No. 210. Alexander G. Bowditch, assignee of the estate of Charles H. Hall, a bankrupt, pl'ff in error, vs. The City of Boston. Massachusetts C. C. U. S. Filed 3rd October, 1877.

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D. W. MIDDLETON

Supreme Court of the United States.

ALEXANDER G. BOWDITCH, Assignee,

PLAINTIFF IN ERROR,

v.

THE CITY OF BOSTON,

DEFENDANT IN ERROR.

PLAINTIFF'S BRIEF.

GEORGE W. MORSE,

OF COUNSEL FOR PLAINTIFF.

United States of America.

Supreme Court of United States.

ALEXANDER G. BOWDITCH, Assignee.

vs.

THE CITY OF BOSTON

PLAINTIFF'S BRIEF.

This case comes before the Court by Writ of Error to the 1st U. S. Circuit Court, and before the latter Court by Writ of Error to the District Court of Massachusetts, where the suit was instituted.

The plaintiff in error is assignee in bankruptcy of the estate of a certain bankrupt, of which that involved in this action is part. The declaration contains six counts; the first, second, third and fourth are founded upon Gen. Stats. of Mass. ch. 24, secs. 3, 4, 5, 6 and 7, viz: —

Section 3. When a fire breaks out in any place, the firewards shall immediately repair thereto, and shall carry a suitable staff or badge of their office.

Sect. 4. The firewards, or any three of them present at a place in immediate danger from a fire, and where no firewards are appointed, the selectmen or mayor and aldermen present, or, in their absence, two or more of the civil officers present, or, in their absence, two or more of the chief military officers

of the place present, may direct any house or building to be pulled down or demolished, when they may judge the same to be necessary in order to prevent the spreading of the fire.

SECT. 5. If such pulling down or demolishing of a house or building is the means of stopping the fire, or if the fire stops before it comes to the same, the owner shall be entitled to recover a reasonable compensation from the city or town; but when such building is that in which the fire first broke out, the owner shall receive no compensation.

SECT. 6. Such firewards or other officers may during the continuance of a fire require assistance for extinguishing the same, and removing furniture, goods, or merchandise, from a building on fire, or in danger thereof; and may appoint guards to secure the same. They may also require assistance for pulling down or demolishing any house or building when they judge it necessary; and may suppress all tumults and disorders at such fire.

SECT. 7. They may direct the stations and operations of the enginemen with their engines, and of all other persons for the purpose of extinguishing the fire; and whoever refuses or neglects to obey such orders, shall forfeit for each offence a sum not exceeding ten dollars.

Mass. special statute 1850, ch. 262, secs. 1, 2, 3, viz: —

SECTION 1. The city council of the city of Boston may establish a fire department for said city, to consist of so many engineers and other officers, and so many enginemen and other members, as the city council, by ordinance, shall from time to time prescribe; and said city council shall have authority to make such provisions in regard to the time and mode of appointment, and the occasion and mode of removal of either such officers or members, to make such requisitions in respect to their qualifications and period of service, to define their office and duties, to fix and pay such compensation for their services, and, in general, to make such regulations in regard to their conduct and government, and to the management and conduct of fires, and persons attending at fires, subject to the penalties provided for the breach of the city by-laws, as they deem expedient: *provided*, that the appointment of enginemen, hosemen and hook-and-ladder men shall be made by the mayor and aldermen exclusively.

SECT. 2. The powers and duties mentioned in the preceding section, or any of them, may be exercised and carried into effect by the said city council, in any manner which they may prescribe, and through the agency of any persons, or any board or boards, to whom they may delegate the same.

SECT. 3. The engineers or other officers of the department, so appointed as aforesaid, shall have the same authority, in regard to the prevention and extinguishment of fires, and the performance of the other offices and duties now incumbent upon firewards, as are now conferred upon firewards by the revised statutes, or the special acts relating to the city of Boston now in force. They shall also

have authority, in compliance with any ordinance of said city, to make an examination of places where shavings and other combustible materials are collected or deposited, and to require the removal of such materials, or the adoption of suitable safeguards against fire. And said city council are hereby authorized to make suitable ordinances upon this latter subject-matter, under the penalties enacted in the city charter.

Ordinances of City of Boston, Ed. 1869, p. 237, sec. 1–11, viz. —

[illegible] department shall consist of a chief engineer [illegible]

"WORDS PURPORTING TO GIVE A JOINT AUTHORITY TO THREE OR MORE PUBLIC OFFICERS OR OTHER PERSONS SHALL BE CONSTRUED AS GIV-ING SUCH AUTHORITY TO A MAJORITY OF SUCH OFFICERS OR PERSONS."

GENL. STATS. MASS., CH. 3., SEC. 7., CL. 3.

such fire, and carry with them a suitable staff or badge of their office. They shall take proper measures that the several engines and other apparatus be arranged in the most advantageous situations, and duly worked for the speedy and effectual extinguishment of the fire. . . . They shall require and compel assistance from all persons, as well members of the fire department as others, in extinguishing the fire, pulling down or demolishing any house or building if occasion require. . . .

The chief engineer shall have the sole command at fires, over all the other engineers and all officers and members of the fire department, and all other persons who may be present at fires, and shall direct all proper measures for the extinguishment of fires, protection of property, preservation of order, and observance of the laws, ordinances, and regulations respecting fires. . . .

SECT. 9. In case of the absence of the chief engineer, the engineer next in rank who may be present shall execute the duties of his office with full powers.

SECT. 11. Whenever it is adjudged at any fire, by any three or more of the engineers present, of whom the chief engineer, if present, shall be one, to be necessary, in order to prevent the spreading of the fire, to pull down or otherwise demolish any building, the same may be done by their joint order.

The fifth, upon the Constitution of Mass., Part I., art. 10, last sentence, viz: —

> And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

The sixth, upon Gen'l Stats. of Mass., ch. 164, sec. 8, viz: —

> When property of the value of fifty dollars or more is destroyed, or property is injured to that amount, by any number of persons to the number of twelve or more, riotously, routously, or tumultuously assembled, the city or town within which the property was situated shall be liable to indemnify the owner thereof, to the amount of three-fourths of the value of the property destroyed, or of the amount of such injury thereto, to be recovered in an action of tort: *provided*, that the owner of such property uses all reasonable diligence to prevent its destruction or injury, and to procure the conviction of the offenders.

The joinder of the sixth count may appear inconsistent. It is explained by the fact that the plaintiff could not ascertain of the witnesses before they were placed upon the stand what their evidence would be, so anxious were they to shield both the city and themselves, rather than to aid the plaintiff in getting at facts. This spirit is manifest in the evidence of most of the officers.

The plaintiff was accordingly obliged to frame his declaration so as to meet the various phases as they should arise.

It is agreed, however, as appears by the exceptions, that there shall be no question in this case as to the form of the action or the sufficiency of the pleadings.

The practice in Federal courts, by the recent Act of Congress, is to conform as near as may be to that in the courts of the several States where such Federal courts are situated. See Rev. Stats. of U. S. ch. 18, Sec. 914.

By the Act of 1865, ch. 179, entitled "an act allowing certain amendments in the form of civil actions," the legislature of Massachusetts has provided that the courts shall allow suits at law to be changed into proceedings in Equity, — or proceedings in Equity into suits at law, if the same be necessary to enable the plaintiff to sustain the action for the cause for which it was intended to be brought.

Folger vs. Columbian Ins. Co., 99 Mass., 277.

And this change may be made though a new suit would be barred by the statute, which provides that no action by or against an assignee will lie unless brought within two years of his appointment.

George vs. Reed, 101 Mass., 378.

Where there is no question as to the form of action, or sufficiency of pleadings, the case may be considered upon the broadest ground.

A count in tort may be joined with a count in contract when it is doubtful to which class the cause of action belongs.

Mass. Gen. Stats., ch. 129, sec. 2, clause 5.

At the trial, the plaintiff, after putting in the evidence set forth in the record, rested; and, thereupon, the defendant demurred to the sufficiency of the evidence. The Court sustained the demurrer and directed the jury to find a verdict for the defendant. To this direction, with the rulings specified in the writ of error, the plaintiff duly excepted.

It will be observed that the presiding judge ruled at the beginning of the trial (see page 8 of record), that to render the city liable, the order to demolish must have been given by three engineers, to which ruling the plaintiff excepted.

That ruling of course ended the trial upon the first, third and fourth counts of the declaration, but all question of pleadings being waived, the plaintiff proceeded by consent as if the second count were amended, alleging the order to have been given by three engineers.

This ruling at the outset of the trial, and the exception to it, saves every question raised by the first, third and fourth counts, for after that no evidence was admissable that others than engineers gave the order.

Both the above rulings are erroneous, and to a discussion of those only will the plaintiff mainly confine himself, satisfied as he is that the record shows the property in question to have been demolished in substantial compliance with statutes first above set forth, viz: Genl. Stats. of Mass., ch. 24, secs. 4, 5, 6, 7, 8. Special Stats. of

Mass., 1850, ch. 262, secs. 1, 2, 3. Ordinances of City of Boston. ed. 1869, page 237, sec. 1–11. Constitution of Massachusetts, Part I., Art. X.

The plaintiff has culled out from the record such evidence as he considers bearing upon the question of whether three engineers or a majority of three gave directions in substantial compliance with the statutes for the demolition of this property, the other elements of the plaintiff's case being either admitted or proven beyond controversy.

ABSTRACT OF PLAINTIFF'S EVIDENCE.

Testimony of WILLIAM GASTON, Mayor of Boston.

Q. You were mayor of Boston at the time of the great fire of November, 1872?

A. I was.

Q. At what time did you learn of the fire breaking out?

A. I was at Roxbury. My impression is it was between half-past nine and ten, although I am not certain about the hour when I learned it was a large fire. I heard the alarm, of course.

Q. After learning that, what did you do?

A. I went to the station-house, I think of Station 10, and found out what I could about it. Then I took the next train over the Providence Railroad.

Q. And then?

A. I went from there to the fire.

Q. Where was the fire burning at that time?

A. It extended over quite a number of streets. I think I came down into Washington street, and thence down Essex and into various streets — Pearl, High, Broad, Federal and Milk streets.

A. Did you give any directions during the time you were visiting and viewing the fire? (*Objected to and withdrawn.*)

Q. Were there any firewards at the time in the city of Boston?

A. There was an engineer and assistants; no officers bearing the name of firewards. [After discussion by the counsel, his honor stated that he should rule that to render the city liable, the orders

for the destruction of buildings must be given by three of the engineers; it being agreed by both sides that there were engineers duly appointed. To which ruling the plaintiffs excepted.]

Q. Can you tell about what time you reached there?

A. Only by conjecture. I should think probably between eleven and half-past.

A. I then went with Alderman Jenks, and found the chief engineer, and at that time I saw other gentlemen.

Q. At the City Hall?

A. At the fire. I think it was in Federal street, or in that vicinity.

Q. There was a very great fire? There were large multitudes in the streets, trying to save property and trying to extinguish the fire?

A. The streets were crowded.

Q. Was it as late as two o'clock?

A. I should think it was earlier than that.

Q. At the visit, did you see any engineers, other than the chief, who went with you?

A. Yes, sir.

Q. Who?

A. That I can't tell you, but I know he went into a building, and the chief was there, and some of the engineers; what ones I cannot state.

Q. Can you tell how many?

A. No, sir; I should think three or four.

Q. Besides the chief?

A. Yes, sir.

Q. State, if you please, what was done there by the engineers in respect to the fire in your presence, if anything?

A. There was some question as to the use of powder.

Q. What, if anything, was done in regard to that question — said or done?

A. I talked mainly with the chief. He told me he had already sent persons round to look at some of the points. The question arose whether or not it was wise to use gunpowder, and I am rather inclined to think the impression then was it should be used. My

impression is the conversation I had was rather in the nature of a consultation than in the shape of any order. It was talk about the policy. I don't know that any order — I don't recollect that any order was given to blow up any building or any street, but it was a mere question whether the flames had reached such a stage that it would be proper to use gunpowder. That was rather the form of the talk.

Q. Can you state whether any conclusion was arrived at in your presence?

A. I understood it was their intention to use gunpowder.

Q. After you returned to your office from Federal street, where you say you had met the several engineers who were in consultation — after you returned to the mayor's office, will you state whether any persons in your presence talked over the matter of blowing up buildings with gunpowder?

A. Yes, sir.

A. Gen. Burt was there; Mr. Allen was there; Mr. Shepard. I don't know as these were there all the time. I think Dr. Jenks was there. There were so many in and out, I cannot remember.

A. They came in there — they were citizens, most of whom I knew — in a state of alarm that the whole city would burn down. The flames were then raging with very great violence, and of course we were all impressed with the feeling of the calamity which was then impending over the city; and the question arose whether it had not arrived at a point of time when some expedient beyond water should be used to arrest the progress of the flames. Several of the gentlemen there thought powder should be used.

Q. And so expressed themselves?

A. Yes, sir. The chief engineer came in; he was sent for, I believe, by somebody, and he came in, and there was conversation, and he gave to certain gentlemen authority in writing to blow up buildings. The language of those papers I cannot recall.

Q. Did you authorize any persons to authorize others to blow up buildings.

A. I have no recollection of it. I had a large number of conversations, and I repeatedly said to gentlemen who desired authority and directions from me to blow up buildings, I repeatedly during

the night and day told them I hadn't the authority. I knew, or thought I knew, what the law was, and I told them it required three engineers — that I had not the authority, and could not give it. I have no recollection of all the conversations I had. I cannot give the details of them, but I have no recollection of giving anybody any authority.

Q. Was there anything said having any tendency to show a disposition for the wanton destruction of property?

A. No, sir. My feeling was at that time that they felt as I did, that a terrible calamity was impending over the city. The city was burning down, and they came as citizens to do all in their power to arrest the progress of the flames, and that their sole purpose was the preservation of the city.

Q. And the consultation was in regard to the best means of effecting that end?

A. Yes, sir. I believed them all, from their conduct and bearing, to be actuated by the highest motives for the preservation of the public safety.

TESTIMONY OF JOHN S. DAMRELL, CHIEF ENGINEER.

Q. You were chief engineer of the city of Boston in November, 1872?

A. I was.

Q. Do you recollect the breaking out of the fire on Saturday night?

A. I do, well.

Q. At about what time?

A. Between seven and thirty minutes past.

Q. Where were you at the time?

A. Temple street.

Q. Before midnight all this took place?

A. Yes, sir.

A. At what point was the fire in Congress street at this moment?

A. Towards Summer street. I cannot locate it exactly, because the smoke and cinders and the extreme heat made it almost impossible to designate even streets or blocks.

Q. There had been no gunpowder used up to this time?

A. No, sir.

A. I established my headquarters in Federal street.

Q. At what point in Federal street?

A. I am not able to designate the point precisely, but it was where I could be easily found in five or seven minutes' notice.

Q. Did you meet the mayor of the city at that place?

A. I did.

Q. Who else was present in Federal street?

A. There were present Engineers Green, Smith, Munroe — my impression is, Engineer Jacobs; but of this I am not positive; that is my impression.

Q. And the mayor?

A. And the mayor. I had sent previous to that messengers to the several engineers, to notify them they would meet me at my headquarters for consultation.

Q. What was the nature of that consultation?

A. It was to take into consideration the necessity of using gunpowder, and for further information touching the fire, and the best effort that could be put forth to stay it.

Q. What is your best recollection as to the time of this council at which the engineers and mayor were present?

A. I should think it was very near twelve; it might have been past twelve, but that is my impression.

Q. About how long were you in council there?

A. Might have been fifteen minutes more or less.

Q. Was any decision arrived at in regard to the use of gunpowder?

A. There was.

Q. What was it?

A. By a vote of those present, constituting sufficient authority under the statutes, the chief engineer was designated to use gunpowder by calling to his aid such assistance as might be necessary, and that vote being taken, the matter was duly considered, and the chief designated to act with him Captains Green and Smith.

Q. The vote was that the chief should be authorized?

A. The vote of the board was that the chief had no authority

under the statutes without the co-operation of certainly three, with which it could be done; and, again, that the building and street, and number of such street should be designated.

Q. Was it in writing?

A. No, sir; writing materials were not very plenty round there at that time.

Q. It was never written?

A. No, sir.

Q. Then, by vote of yourself and your associate engineers, whom you have named, it was decided that it was expedient to use gunpowder, and the chief and two other engineers were delegated to do it?

A. The vote was, if in the judgment of the chief that gunpowder could be used in any way to stay the conflagration, the board were ready to co-operate; but it was contrary to their judgment that gunpowder was used.

Q. After that council, what did you do? Where did you go and what did you do?

A. I remained upon the spot, and despatched a messenger to the fire-boat to bring powder, and it was brought.

Q. Where did you send for powder?

A. To the powder-boats in the harbor.

Q. What was done next?

A. The engineers went to their several posts, with the exception of Captains Green and Smith, two engineers.

Q. They remained with you?

A. They remained with me as long as I remained in that locality.

Q. How long was that?

A. It might have been one-half or three-quarters of an hour.

Q. Did you designate any buildings to be blown up while you were together?

A. No, sir, we did not.

Q. After you separated, what did you do?

A. After we separated, I received a messenger, or message through a messenger, for me to repair to the city hall and see his honor the mayor. The messenger stated to me — it was a police officer — that one hundred of the leading citizens of Boston desired

to see me, in connection with his honor, in reference to the saving of the city.

Q. You went to city hall.

A. I did.

Q. This was about one o'clock.

A. I am not prepared to state the hour.

Q. To your best recollection.

A. My best judgment is it was between twelve and one.

Q. What did you find at city hall; whom did you find?

A. His honor the mayor, as I said, but the room was nearly full of citizens.

Q. What was done there — said and done?

A. I can't tell you what was said; there was a good deal said.

Q. The substance of what was said in relation to the use of powder.

A. The inference I drew was this — [*objected to, and excluded.*]

Q. When you were there were Capt. Green and his associate with you?

A. No, sir; on the fire ground.

Q. Had you and Capt. Green, and the other engineer whom you have mentioned as associated with you in this particular purpose, decided to blow up or demolish any buildings at that time?

A. I stated distinctly we had not.

Q. While you were present at that meeting, did you issue orders to use gunpowder?

A. I issued orders to the assistant engineers to use gunpowder.

Q. Did you issue orders similar to this one to Col. Shepard?

A. Yes, sir; but that does not embrace the order as it was intended to be conveyed.

Q. Does it embrace the order that was given?

A. I am not positive. I have not seen one of those. I should like to see one. I should like to see the original, over my signature.

Q. Have you not seen them since?

A. No, sir.

Q. How many of these orders did you issue?

A. To my best judgment and recollection, ten to twelve.

Q. To officials or citizens?

A. To officials and citizens upon request; upon questions put to them, asking them if they would be willing to co-operate and aid in doing this work under proper direction. Receiving an affirmative answer, they were given that authority to pass the lines, to pass the police; and that was the main object of giving the order: to enable the parties who held the order to get into the immediate locality where they could be of assistance.

Q. You said they were officials or citizens.

A. They were citizens and officials combined.

Q. Who selected those persons to whom you gave those orders or directions?

A. I don't think there was any selection about it. Gentlemen, anxious to serve the city, presented themselves to do whatever might be presented for them to do.

Q. Those gentlemen volunteered their services, and you accepted them and gave them the appointment, whatever it was.

A. As I should if you should volunteer to aid and assist me in any work; I should give you the requisite authority.

Q. What was done next in respect to the use of gunpowder?

A. I left the city hall and repaired to the fire ground.

Q. At what point?

A. Federal street. The movements that were made next were for a change of the apparatus, forming a line on Washington street, the southerly end in Summer street and the extreme easterly end at Milk street, and to form a line on State street and Lindall, and also to form a line at right angles with the State-street line, at the foot of Water street.

Q. What was done in regard to the use of gunpowder?

A. Personally, what was done I could not state. I expected to meet the engineers and the parties who were to assist in the organization of the special force, and then systematically proceed to work, if a line of action could be marked out, to use gunpowder; but no such organization was effected, so far as I know anything about it, and I failed to meet any of those parties who volunteered to help.

Q. Did you meet the two engineers who were to be associated with you?

Yes, sir.

Q. Did you give any directions or do anything in regard to using gunpowder — you three?

A. I authorized, I think, my impression now is, Capt. Smith to receive the assistance of parties to aid and assist him, and when the arrangement was made to come to my headquarters in Federal street, and the designation of the proper buildings would be made.

Q. Did you meet him there?

A. No, sir; I met him right after that, and gave him an order which I was sorry was obeyed, under the circumstances, and the engineers proceeded to Charlestown and Chelsea to obtain gunpowder.

Q. What engineer was that?

A. Capt. Smith.

Q. He was one of the three?

Q. Did you and Smith and Green meet again that morning?

A. Oh, yes.

Q. Did you designate any buildings and order them to be blown up?

A. I said we did not designate any buildings and order them to be blown up during the night.

Q. You knew that gunpowder was used in various places?

A. I have reason to believe it was.

Q. You knew there were explosions?

A. Yes, sir; both from gunpowder and gas and rarification of air. There were several explosions going on all the time; a great many more were claimed for gunpowder than were actually from that.

Q. You and the engineers did not direct the demolition of any building in Boston by gunpowder?

A. No, sir; not when I was present. If any three engineers did when I was not present, I have yet to learn the fact.

Q. Do you know that any three engineers directed the demolishing of any building by gunpowder?

A. I do not know the fact.

Q. In these consultations you had at the mayor's office and in Federal street, what was the character of those assemblies — as to whether riotous?

A. No, sir; the opposite—the highest type.

Q. Who were they principally composed of?

A. At my headquarters, the engineers, alderman Woolley, alderman Jenks, councilman Jones.

TESTIMONY OF WILLIAM WOOLLEY.

Q. You were one of the aldermen of the city of Boston in November, 1872?

A. Yes, sir.

Q. And after half-past seven, where did you go and what did you do?

A. I think it was about twelve o'clock, a little later, perhaps; I have no recollection of looking at my watch during the whole night; but I should judge about that time I received word from a fireman, a messenger, that the chief would like to see me, if possible, in the vicinity of Milk street, on Federal; that he had sent for the engineers to meet him there as far as practicable, and I immediately worked my way round the fire, having to go some ways round to get there. I think I got to that vicinity about quarter after twelve.

Q. Did you meet the chief there?

A. I did.

Q. Who else were with him?

A. Captain Green, Captain Smith, Captain Monroe, I am pretty positive. Alderman Jenks and Cutter, I think, was there; I think Mr. Jones, of the council. I don't recollect of any more being present at that time, but I should judge there was some twelve or fifteen.

TESTIMONY OF GEO. O. CARPENTER.

Q. Do you know whether any gunpowder was carried into Milk street on that morning for the purpose of blowing up buildings?

A. No, sir.

Q. Did you see any carriage you had reason to believe contained gunpowder?

A. Yes, sir; I was in one of them.

Q. What kind of a carriage?

A. An ordinary hack.

Q. What was in it?

A. Kegs, I believe, to contain gunpowder.

Q. Where were they carried?

A. They were carried along Devonshire street, near the Rialto building.

Q. What was done with the powder that was in the carriage when it was carried to the vicinity of the Rialto building—was it taken out?

A. I presume so.

Q. Did you leave the carriage before the powder was taken out?

A. I was obliged to, to get it out.

Q. How much powder was there in the carriage; how many kegs?

A. I don't remember how many; about six or seven small kegs.

Q. In ordinary powder kegs?

A. Yes, sir.

Q. Where did they come from?

A. From Dock square.

Q. Did you bring it there?

A. It was brought in the carriage there.

Q. Was any one else in the carriage besides yourself?

A. Yes, sir; a gentleman.

Q. What was his name?

A. I don't recollect. He had his books, and was going home.

Q. Did you procure the powder?

A. No, sir.

Q. By whose direction was it procured?

A. I don't know.

Q. By whose direction was the carriage driven to near the Rialto building?

A. By those who were in attendance with me and left the City Hall.

Q. When you arrived at or near the Rialto building, you say you got out first; what did you do?

A. I don't remember. My impression is I went over on the post-office side of the fire. I don't remember particularly.

Q. You don't know what was done with that powder?

A. No, sir.

Q. How long did you remain there near the new post-office?

A. I staid there perhaps five minutes.

Q. Where did you go then?

A. I don't remember where I went directly from there, but my impression is I went into Water street and State street.

Q. Do you recollect going into the store of Armstrong & Co.?

A. No, sir; I do not.

Q. Did you remain in that vicinity any length of time?

A. This carriage was stopped this side of Milk street.

Q. You came down Devonshire, and the carriage stopped opposite the post office before you got to the Rialto building?

A. About at the Rialto building.

Q. Then you went over opposite the post office?

A. On the opposite side of the Rialto.

Q. And staid there five minutes; where did you go after that?

A. I don't remember where I went, but I think it was State street.

Q. Have you any means of knowing whether the building diagonally opposite the Rialto was blown up?

A. No, sir.

Q. What was said by any persons in the carriage as to where the powder was to be carried, or what it was used for?

A. I don't remember.

Q. Can you state what was said when it was removed from the carriage?

A. No, sir.

Q. But you heard a noise of an explosion shortly after you left the powder there?

A. So it appears from my evidence then.

TESTIMONY OF EDWARD ATKINSON.

A. I heard explosions that appeared to be explosions of gunpowder, and I supposed they were, knowing nothing about gunpowder or how to use it. I stood in front of the Union building,

on State street, and was there requested to go to the mayor's office and see how the gunpowder was to be used.

Q. About what time was that?

A. I cannot be sure of hours; somewhere in the course of the night. I should say, by reference to what I did afterwards and the time it must have taken, that that must have been somewhere in the neighborhood of midnight, or between midnight and one o'clock in the morning; I can't be sure.

Q. State what then took place.

A. I went to the mayor's office, and was referred there by some one to Gen. Burt. I went back and reported to those who had asked me to go that Gen. Burt appeared to have something to do with gunpowder. I sought him, but didn't find him.

TESTIMONY OF G. A. ORDWAY.

Q. Where do you reside?

A. Charlestown.

Q. You were a policeman of the city of Boston in 1872?

A. Yes, sir.

Q. After midnight, do you recollect at any time being in Milk street, near the new post-office?

A. Along towards morning, I was there; perhaps three o'clock.

Q. Do you have any recollection of visiting the store of Armstrong & Co., directly opposite the new post-office and diagonally from the Rialto?

A. I was in that vicinity, opposite the new post office.

Q. For how long?

A. An hour or an hour and a half.

Q. Did you go in the store of Armstrong & Co., the firm of lithographers, opposite the new post-office, that night?

A. I was in the store there that they blowed up; I could not say whose store it was. It was on the upper corner.

Q. You were there when that was blown up?

A. Yes, sir.

Q. Some time previous to this being blown up, did you go into the building?

A. I was in the lower part of the building, or on the steps of the building, inside of the door.

Q. Were there persons in the building when you first went there?

A. Yes, sir.

Q. What were they doing?

A. There were people there taking goods out, and there were people there who seemed to be officiating and doing what they could for the city of Boston.

Q. Those people that were taking goods out — what kind of goods were they?

A. I should be unable to state, I saw so many taken out that night.

Q. You saw some taken out of this store?

A. I saw goods taken out; packages.

Q. Was there any team in front of it?

A. There was a team there; yes, sir, loaded up.

Q. Loaded from this store?

A. Yes, sir.

Q. What next took place there? You were there and saw them taking the goods out and putting them in the team. What next did you see?

A. The next I heard, the building was to be cleared; they were going to blow it up.

Q. Did you see any powder carried into the building?

A. I could not say it was powder. I should have all the reason to suppose it was powder. I saw kegs carried into the building; I could not say it was powder.

Q. Ordinary powder kegs?

A. I saw a keg carried in there.

Q. Where did that come from?

A. It was taken from a hack.

Q. Near by?

A. Yes, sir.

Q. And carried into this building?

A. Yes, sir.

Q. Do you know what was done with it after it was carried in?

A. No, sir.

Q. At that time, whether anything was said or done by the people in the building? Did they continue to carry out their goods, or what did they do?

A. After this was carried in, they had orders to clear the building; they were going to blow it up.

Q. Orders from whom?

A. I could not tell you who the orders came from. They came from somebody who was officiating.

Q. Did they have any uniform on?

A. No, sir.

Q. Were they known to you personally?

A. Some of them were men I have seen a great many times, but I don't know who they were or what their names were.

Q. Did you obey those men?

A. I did.

Q. Did you know whether they were officials or not?

A. I didn't know whether they were legally appointed officials, but we supposed they were.

Q. Was anything said by the person carrying the powder into the building at the time he carried it in? Who was it carried it in — do you recollect?

A. Yes, sir.

Q. Did he say anything at the time?

A. He said he wanted to see one building blown up; he never had.

Q. He said that as he was carrying the powder in?

A. Yes, sir.

Q. You said you obeyed those persons who seemed to be in there, without knowing who they were.

A. Yes, sir.

Q. Was there a considerable number of police officers about there?

A. Yes, sir.

Q. Enough to manage the crowd?

A. We had to manage them. There was not enough to manage the crowd, but we had to do the best we could under the circumstances. I don't wish to be understood that the crowd, as a general

thing, were all noisy or intoxicated; but, as I said before, you would find business people there, doing all they could to save property, and there were noisy ones among them.

Q. After these people were sent out of the building, who drove them out — the owners and clerks?

A. The officers ordered them out.

Q. By order of these unknown persons?

A. Yes, sir.

Q. Where did these unknown persons come from, whom you supposed to be in authority, but didn't know — whether they came from the crowd round the building?

A. I believe there was not but one man there whom I remember that night, to know him, at that building, and I think that was Mr. Russell. He was there, and knowing him, as I did, I took my orders particularly from him.

Q. What Russell was that?

A. The collector of Boston.

Q. Where did Judge Russell and the others come from; whether they came from that crowd?

A. I saw Mr. Russell there at the post office.

Q. When they came into this building?

A. I didn't see Mr. Russell in the building.

Q. Was he standing among the crowd?

A. Yes, sir.

Q. There were others whose names you do not remember, and who appeared to be in authority—were they standing in the crowd?

A. The people who had charge of the powder were in the building.

Q. How many?

A. I could not say.

Q. A considerable number?

A. I should say there were.

Q. How many would you say now?

A. There might have been ten or twelve.

Q. Whether those people came from the crowd which surrounded the building, as far as you saw?

A. I suppose they had to come out of the crowd to get into the building.

Q. After these people were driven out of the building, then you say you drove the crowd back; how far back did you drive them, or did they go?

A. Out of danger.

Q. You called out the building was to be blown up?

A. Yes, sir.

Q. What followed then?

A. An explosion.

Q. From the place where they carried the powder?

A. Yes, sir.

Q. What was the effect of that explosion upon the building?

A. It didn't blow the building down. It blew off part of the wall and the roof; some of it blew off.

Q. And the floors?

A. Yes, sir.

Q. How long was this explosion after you began to drive the people out of the stores, to your best recollection?

A. Might have been, perhaps, half an hour.

Q. Did the wall on Milk street fall in or fall out towards the new post-office?

A. Towards the new post-office, I think; I will not be positive. That was the only wall that fell, I think. I will not be positive which way it fell. It didn't all fall down.

Q. Do you recollect anything said by the owner, or any person in charge, when you began to drive the people out, as to moving the goods or requesting time to do it?

A. If we could give him time, he could get the most of his goods out; and they turned around, the parties who had charge of the blowing up, and told him the powder was in the building then, and it would be dangerous to remain there.

Q. Did he state what time he could do it in?

A. He said it would not take him more than an hour or two to get his goods out.

Q. State whether you saw any persons there wearing badges not known to you to be officers.

A. There were.

Q. Did you know who they were?

A. No, sir.

Q. Did you know whether or not they were police officers?

A. I did not.

Q. Are you certain you were in that building — you are not mistaken about what building you refer to where certain things took place?

A. No, sir; because I remember some remarks that were made afterwards — if they had blown down the one on this corner it would save burning the post-office. This corner was not burned off, and this corner was burned off, and I have made the remark a great many times, if they had blown that building down it would save burning the post-office.

Q. When you went there, you say you found persons moving goods out connected with the store?

A. I suppose so; they said they were.

Q. How many were they?

A. I could not tell. There were several people. I should be unable to state.

Q. Now, then, when they were ordered out because they were going to put powder in, were other persons admitted to the building except those who were connected with placing the powder?

A. None that I know of.

Q. How many were connected with getting the powder into the building?

A. I said I would be unable to state; might be more or less.

Q. How many did you know?

A. I could not state positively how many there were.

Q. How many kegs of powder were carried in?

A. I didn't see but one keg carried in.

Q. Did you see more than one man go in?

A. I saw one man.

Q. Do you know any others went in?

A. I could not say. I could not say there was any more powder in.

Q. Did you see more than one man go in with the powder?

A. Only one man went in with that one keg. I don't think that man had anything to do with placing it. There were other men in there.

Q. The men that were in there—were they the persons employed in the store to get out goods?

A. There appeared to be a party who pretended to own the goods getting them out, and there appeared to be a party there who officiated to blow up the building.

Q. You said you saw an officer carry in powder; do you know who the officer was?

A. It was Officer Knight of Station 3.

Q. Did anybody help him?

A. I saw nobody help him.

Q. Was Judge Russell there?

A. I saw him at the post-office, but not at that building.

Q. How many men did you hear give any order to those persons who were engaged with the powder?

A. I could not say but one, but there might be more. I heard an order given to one of the men to leave the building, and he turned round to the officers in the building, and said he would like to have time to get out his goods; and this man made the remark, the powder was in the building, and the building would be unsafe to work in while the powder was there.

Q. You heard but one man give an order?

A. There might have been more than one given. I can certainly say I heard one.

Q. At the time you had driven the crowd back, after the powder was carried in, can you state how many of those persons you thought were in authority went into the building at all?

A. Those people were out and in as they saw fit, arranging the powder. I say there might be a dozen, and might not be so many.

Q. When you speak of the ten or twelve, more or less, you make a distinction between those who remained in the building and those who went away after the powder was put in?

A. Yes, sir.

Q. Before the powder was put in, was there any distinction between those connected with the powder and those outside?

A. Those were people I supposed were officiating.

Q. What was there to distinguish them from the other members of the crowd?

A. They talked about blowing up the building, and seemed apparently to be making arrangements for the powder.

Q. In regard to the number of persons whom you say were connected in the building with the blowing up, whether they were more or less—whether you included in that the police and others who were driving the crowd back?

A. No, sir; I did not.

Q. How many were there?

A. I could not say how many officers there was there.

Q. About how many?

A. It would be pretty hard for me to say. There might have been twelve or more.

Q. You received your orders from the persons in the building?

A. Yes, sir.

TESTIMONY OF JOHN M. FRENCH.

Q. Of what firm are you?

A. French & Coffin.

Q. Did that firm exist at the time of the fire?

A. It did, sir.

Q. Where was your place of business?

A. Fifty-nine Milk street.

Q. What was your business?

A. Saddlery hardware.

Q. Fifty-nine is next door to the building that was blown up?

A. Yes, sir.

Q. Were you at your place of business that night?

A. Yes, sir.

Q. Until what time?

A. I came there about half-past ten.

Q. How long did you remain?

A. Until I was ordered out of the building by the parties who notified us they were intending to blow the corner up.

Q. What time was that?

A. I should say it was between twelve and one o'clock.
Q. What were you doing?
A. Packing goods.
Q. Had you got your goods pretty nearly packed?
A. A large portion of them.

TESTIMONY OF JOHN H. COFFIN.

Q. You are Mr. Coffin of French & Coffin?
A. Yes, sir.
Q. Were you at your store that night with your partner, Mr. French?
A. Yes, sir.
Q. You left when he did?
A. Yes, sir.
Q. Why did you leave that building?
A. We were ordered out.
Q. By whom?
A. Could not say who it was.
Q. How many persons?
A. I saw there was one came in who had a badge on his hat that said "engineer" on it. There was another one behind him I should say was a fireman.
Q. What did they say?
A. Said they had placed powder in the next store.
Q. What were you doing there?
A. Packing the goods.

TESTIMONY OF RUFUS BROWN.

Q. (By Mr. ALLEN.) Were you in the building of Charles H. Hall the night of the great fire?
A. Yes, sir.

Q. What were you doing there?

A. Carrying out goods.

Q. What time did you get there?

A. I think about twelve o'clock I got there; I am not positive.

Q. How did you happen to go there?

A. My son was in the employ of the firm, and I went there to look after him.

Q. Did you find him there?

A. I did.

Q. What were they doing?

A. They were carrying out goods.

Q. How many were engaged in packing up—they were packing up as well?

A. I didn't stay up in the room with him. I took bundles of goods and carried down myself. I didn't stay there at all.

Q. How many were engaged there for Mr. Hall in doing that?

A. I could not say. I should think there were ten or twelve.

Q. How long did you work there, to the best of your recollection?

A. Not a great while. I think I carried down three bundles myself.

Q. Then what happened, if anything?

A. I was going up after another lot, and a man came to the door and ordered all persons out of that building; they were going to blow it up. My boy was up stairs, and I ran up after him to get him out. I did get him out, and we didn't go up again.

Q. Who was it that ordered you to go out?

A. I could not say who it was. My impression at the time was, it was one of the engineers of the fire department; but I may be mistaken.

Q. There were people outside?

A. The street was full. There were numbers of people going up and down all around.

Q. Where was the fire at that time?

A. I think the fire had crossed Franklin street. I know it had; because, before I got down there I saw it on fire on both sides of Franklin street.

Q. It was several stores from Mr. Hall's?

A. Oh, yes.

Q. Did you stay there until the building was exploded?

A. No, sir.

Q. Where did you go?

A. I took my son with me and went home; I think it was about half-past two.

Q. Let me ask you if the door out of which you carried the goods fronted on Milk street, or Devonshire?

A. On Milk street. We carried the goods over into the new post-office and deposited them there, and parties there received them and took care of them.

Q. There were plenty of them standing at the door?

A. Yes, sir; Mr. Hall was at the door when I first went in.

Q. He is one of the owners?

A. Yes, sir. I understood afterwards he was Mr. Hall. I didn't know him at the time.

TESTIMONY OF WM. L. BURT.

Q. (By Mr. ALLEN.) You were in Boston on the night of the great fire of November 9th and 10th?

A. Yes, sir.

Q. Where were you when the fire broke out?

A. I was at my house on Tremont street.

Q. How soon were you in the vicinity of the fire?

A. A very few minutes; I came down in a horse-car and got into the street before the fire was across the street.

Q. Did you, during that evening or night, have any conference with any of the engineers of this city?

A. I did.

Q. At about what time?

A. Two or three times, and finally left them at the City Hall with the mayor and some of the board of aldermen.

Q. What was the first time you met with them and where?

A. I was at the City Hall three or four times trying to find some

one who had some authority. I sent for the mayor twice, and finally, when the mayor got there, we got the City Hall lit up and had an informal meeting in the mayor's room. Chief Damrell was there and the mayor; Mr. Allen, who was then in the water board, and five or six others; Alderman — I am very much troubled about recollecting names, — I could not recollect his name.

Q. About what time was that?

A. It was then midnight, or after. I have got a memorandum by which I can tell exactly, because the following morning I stated it all and had it all taken down. There was so much destruction of property, I felt it was right to protect everybody I could. I made a statement, which is preserved, and will tell you all the people's names, and everything that was done at the fire.

Q. Have you that statement here?

A. No, sir; I just came up and found that the word was left that the court came in at half-past nine. I was obliged to disappoint them yesterday, being engaged on business for the government, and came right up.

Q. Was any action taken at the first meeting at the City Hall in regard to the use of gunpowder in blowing up buildings?

A. Not at first; there was no one there to authorize it, no one to sign it. The City Hall was not lit up, and we could not get the city officials together. We finally got them together, and then this matter of blowing up was discussed in a few words.

The examination of Gen. Burt was suspended at this point to allow him to produce his memorandum.

TESTIMONY OF WM. L. BURT RESUMED.

Q. (By Mr. ALLEN.) You have not been able to find the memorandum?

A. I have not found the original memorandum. I had the same with me at the time I was before the committee, appointed by the mayor, on the fire investigation. I find there substantially the same statement. In reading it, I find there is one page of it that is an entire transcript of what I had written out before.

Q. You have stated you came down to the fire and went up to the City Hall?

A. I went up to the City Hall and found it all dark; I made efforts to have it lighted up and to find some of the officers; found that some of the engineers had assembled there, and had a short talk, and separated.

Q. What was done next?

A. That was about midnight. About half-past one or two o'clock I came up again. I had been there to get them to light the building, but I could not find any one who would take the responsibility of lighting it up. There was no one who would take the responsibility. At this time I saw, as I came up School street, the mayor's room was lighted. I went to the rear entrance and met an officer, who said: "The mayor has come," or "has just come up with Chief Damrell"; and he took me right up to the mayor's room. Then we had an interview. I told him I had been there from the time the fire started, and, after two hours, it was evident the fire would be beyond control, and the whole city would burn if it was left as it was, and there had got to be some efficient means taken to stop it. They asked me about the use of gunpowder. I said I had seen it used, and could use it, and was willing to take the responsibility; that somebody must. Mr. Damrell said he was opposed to it from the results he had read of the Chicago fire. I think he said he had been there himself and made an examination, and in a city like ours he hesitated to use it. The mayor said he had no authority — it rested with Mr. Damrell; and then asked me directly if I felt that I would be unwilling to undertake to blow up that part of the city. I told them if I had the authority I certainly should do it. I told the mayor if the fire was not checked he could look out of his window in the City Hall in the morning, and see the shipping in the harbor; certainly, as the fire was then going. He said he would give me the authority, and directed Mr. Damrell to go to his desk and write the authority for me to blow up buildings.

Q. Is this the paper?

A. That is a copy of it; the original of it is here. [*Photo-lithographic copy put in.*]

Q. Did he write other orders of a similar nature for other persons?

A. I did not suppose another one was to be written. I should not have taken that if I had.

Q. You would not have taken that if you had known another was to be written?

A. No, sir, I should not. I then asked some gentlemen who were present to take a particular district of the city. Mr. Damrell took the district between Summer street, towards the south, as far as Franklin street. Mr. Allen, chairman of the water board, took the district down towards the lower part of Federal street, running down by the Hartford and Erie depot, and coming down towards Fort Hill. I cannot give the names of all, but the city was divided off on the spot, and a gentleman who was a reporter for the "Boston Herald" made a record of the persons and their respective districts. I was assigned to Federal and Devonshire streets, so I should be between the new post-office, old post-office and sub-treasury. I told them I had begun to move my mails out. At 11 o'clock, I had stopped the mails at the New York depot. I had all my teams ready to move the mail. At that time I had them in the street. I locked up the sub-treasury building and put it in charge of watchmen, and from that time until 7 o'clock the next morning no one went into the Merchants' Exchange that was not passed in by a watchman. Capt. Damrell went in once; I took him in the rear door; broke out a light of glass and helped him through. When we got this order, for the purpose of having policemen go with us, we had two policemen assigned to each one. I had two assigned to me, and went to Devonshire and Federal streets. At that time the fire had just crossed into what is called the Revere bank building, having come across from the cathedral estate. If we could have got the powder a half-hour earlier, we could have saved its crossing Franklin street at all on to this side. These policemen took their station at the head of that street. There was quite a crowd between us and the fire. They were directed to let no one pass in towards the fire, and we went up to reconnoitre and see what we should do as to blowing up buildings, and see where to begin. We began as near up as we could, taking a building with the roof on fire. I went into the building with the powder and fuse. I think Capt. Green was with me.

Q. What building was that?

A. I can't tell you.

Q. What side of Devonshire street?

A. On the right-hand side. The first difficulty in Boston that night was, we could not get the powder. If I could have had four hundred pounds to put into the first building, to blow it up instead of tearing it to pieces, we should have made a success of it. We got no powder till we got it from the navy yard. They were to send it from City wharf, but it did not come, or we did not get it. The first powder of any amount came from the Charlestown navy-yard, about 2 o'clock. The powder-man came over with his one-horse wagon, with his powder in packages of fifty or one hundred pound kegs. He drove up to the end of the street, and a policeman came up towards the fire and told me the powder had come, and I went and found the load near the fire engines, which were playing. The driver had run away. As soon as they hollered the powder was coming, they commenced to clear the street. The men and the fire engines fell back. I took the horse, and came by the engines into the head of Devonshire street and some way up the street. We took out one hundred or fifty pound packages in the woolen blankets and put them into a building.

Q. What building was that?

A. On the right-hand side of Devonshire. The building on that corner was not blown up. [*Indicating on plan.*]

Q. What corner?

A. Milk street; Milk street was where we formed the line. We first tried to stop the fire coming through towards Morton place and coming up towards Washington street. The line we marked out was the Old South church, the new post-office building, the old post office and State street, to prevent the fire sweeping across the city in that direction, and we went at it. I took Federal and Devonshire streets for the purpose of using it efficiently, feeling that was the point where powder had got to be used if it was used to any advantage. I blew up that building. [*Indicating on plan*]. The fire had gone through the roof and had connected over with the building beyond; and we continued until we got to the corner. This was the building, back on this side, on the left hand side as you come up

Devonshire street coming towards Franklin. The first one we blew up was pretty well up into Devonshire street. That is the line it took [*on plan*] in burning through that street. It was at 4 o'clock, or about 4 o'clock, the fire had crossed Milk street into the old building down below the new post-office. I was through the new post office building. The staging in the rear we tried to tear down to prevent its getting in. Finally I went and brought in powder, and we put it in the building below the new post-office fronting on Congress street, and we blew that up, so it fell, and fell towards the Congress street side. Then, as we got into the narrower streets down to the rear of the old post-office—Lindall street, I think,—I put in about two hundred pounds of powder in the building opposite that. I knew the clerks were removing the mails. I went around into the building; while they were there taking out the things I was in the post-office room. I know I told them the fuse would explode in about ten minutes. We were all of us blown flat, clear across the floor, some of us down stairs; but it blew up the building quite effectually so it fell the other way. The fire got under the roof of our own building, the top of the Merchant's Exchange building. I went up stairs after the fire was in and blew off the iron roof so the coping stones were thrown out and came down through the roof of the adjoining building. Then, on Kilby street, I put the powder in there so if the fire had got to the corner we should have blown that up. That was the last of the blowing up. It was then 6 o'clock, and Alderman Woolley came down and directed the blowing up to stop, and it did stop. The fire continued to burn, however, going down into Liberty square. All that was burned after broad daylight, from store to store. The buildings were granite and the roofs were slate. At that time State street was full of engines so you could not go up and down the street. In fact all these narrow streets were. It was impossible to get any goods out of the way. The policemen didn't allow even the owners of stores to take anything but their books. Nobody could save anything. The only way they could save was, two avenues were opened to Fort Hill and up on to the Common. Through these people saved goods; but all the goods that were put in Federal street and Congress street were burned. After we commenced the use of powder it was done with great care.

There was not a person that night that was injured by an explosion. There were persons who were injured on Federal street, by the carriage factory, and at the rear of this building that fell on Washington street; but wherever we used the powder that night, there was not a person that was harmed. It was done as systematically as it could be. We burned about four tons of powder, and we had about three or four tons in State street. Every doorway on State street, from one end to the other, on the opposite side, was filled with powder at 7 o'clock the next morning; we had a large lot down in Dock square waiting to come up. It came from the forts, from Chelsea, from the navy-yard, each man reporting when they brought it. That is a general statement of the use of it.

Q. At the time when Mr. Damrell wrote this order which you have in your pocket — you say it was written at the City Hall — can you recollect what officials of the city fire department were present besides Mr. Damrell? Which of the engineers were present?

A. There was only one. Mr. Damrell was present, and there was an assistant engineer. I don't know who. I labor under the difficulty of not recollecting names. Mr. Green I knew only by sight.

Q. Are you certain there was not more than one engineer besides the Chief?

A. There might have been.

Q. What is your recollection of the number of engineers who were present at the time this order was given; I mean in the room?

A. My impression would be, the Chief Engineer and some one of the assistants.

Q. Please state the conversation which took place as regards this matter?

A. It took place very rapidly.

Q. Try and recall if there were not other engineers present at this conference?

A. If you suggest anything that was said it might help me. I don't recollect anything only the fact that the Chief Engineer was there and, I think, some one of the assistants, but which one I don't know.

Q. You were not present at the meeting of the engineers in Federal street?

A. No, sir; I heard of it, but I was not there.

Q. Was it spoken of at the time this order was given?

A. I think they said they had a consultation; but whether that meeting was before or after, I don't know.

Q. Recollect whether Mr. Green was there with the chief?

A. That is what puzzles me in regard to assistant Green — when I met him, if I didn't meet him at the City Hall, to begin with.

Q. Was there an engineer by the name of Swift?

A. I should not recollect him by name.

Q. Do you know one named Smith?

A. I didn't know him by sight.

Q. You are not positive whether any other engineers than the chief and Mr. Green were there?

A. I don't say that Green was there. I am positive that the chief engineer was there and some one of the department, and I say my impression was that Capt. Green was there, from the fact that I met him sometime that night, and I cannot fix it where I did meet him.

Q. In regard to the staying of the fire at the point on Milk street and Devonshire street — this corner building — whether that did stay the fire at that point?

A. I think it did. I think we stopped it here first, and checked it from going through there, so it did not get above the new building on the corner, which is called the Rialto Building, which was then unfinished. We stopped it there so we got it into control. This building helped us. The blowing up of this building helped us. It got across on to the corner of Congress and Water streets by the merest accident. I think that helped very much.

Q. Now, in regard to the condition of that new post-office; was it not damaged down here a great deal more than here?

A. Yes, sir.

Q. This you didn't blow up?

A. I blew up the rear of that building; that was Mr. Potter's building. I went in and blew him up, and blew his safe clear across the street. The new post-office building was damaged on those two corners very much by the burning of the Simmons lot. Those two corners were damaged to the amount of $178,000. This corner was damaged very little.

Q. I understand you to say while you were with the chief, at the time this order was given you, a line was designated you where you should go?

A. It was to each one, and two officers were assigned to me as policemen. I don't know their names, but they went with me and took charge of the two streets, and were very faithful.

CROSS-EXAMINATION.

Q. (By Mr. HEALY.) You know the building in question; was that within your district?

A. Yes, sir; entirely, exactly in my district. It was a very prominent point.

Q. Then that was under your supervision all the time?

A. I so considered it; at that time until morning there was no question as to it, and there was no question during the night as to obeying our orders, even to assigning engines and doing everything.

Q. Who made that assignment of police officers?

A. It was done, my impression is, by the chief of police right there in the room. At any rate it was done by the police department, the chief or assistants. We sent to the Second Station, and the clerk of the chief was in there, and we had some one who came in and gave us those officers. They had already put in a large number of the supernumerary officers, who were looking for the people who were stealing. As they came into the Second Station, each of those officers was taken and detailed for this new service under this new arrangement. Who was there, whether the chief or not, I don't recollect.

Q. When this powder was brought in from the various places from which it came, in whose custody was it put?

A. They reported to me and to Capt. Green, who was there.

Q. Who had the custody of it?

A. The city themselves sent; Mr. Damrell said he would send. The city's powder was sent in some way from Central or City wharf, I don't recollect which.

Q. It was somewhere where you could have access and get it; in whose custody was it?

A. I don't know the person who had the city powder. The navy-yard powder I had, and the Chelsea powder I had. It was some one connected with the fire department.

Q. Did anybody have anything to do with the blowing up of any of these buildings except the parties who were designated to that duty?

A. There was not a building blown up in that district that night that I did not know of. I will not say I gave an order, because it was done by consultation; but the arrangements for blowing up the whole of it, clear down to State street, was done in each instance with my personal knowledge and, you may say, direction.

Q. There was no indiscriminate mob blowing up?

A. There was nothing of the kind. In the blowing up of buildings there was a question as to the amount to use; a question as to which building to take first. The actual use of gunpowder that night was not in hap-hazard hands. Nobody set a fuse in Boston that night who was not authorized to do it. Capt. Green had a fuse and I had one; there were only a few that had fuses at all. Those men who knew about the length of fuse for the time to burn were the only ones who set one on fire. Some learned more about it after seeing it done. George O. Carpenter, I recollect, had one. There was no indiscriminate blowing up that night.

Q. Was there any injury done to this building in question by any outside mob or assembly?

A. You mean in breaking in? We broke into the store; we broke the doors out.

Q. I am speaking not of you.

A. You mean outsiders?

Q. Had they any means; any powder to be got at?

A. There was nothing that was not under the instant control of us at any time; and in going into buildings, the orders were very strict about it. Not over two or three went into the building. Everybody run as soon as they saw one hundred pounds of powder, even with a woolen blanket over it. It cleared the streets itself. The policemen gave the word when the powder came up. We

broke into that store. I should say four persons went inside of the store to make the arrangements for blowing up, and after the powder was finally placed, there was but one person that came out.

Q. Are you able to state how many went in on the first floor of that store? You put powder in the basement?

A. In the basement, and I think, some on the first floor in the rear.

Q. In two different places?

A. I think we put the powder in two distinct places and fired it from below.

Q. Is it your recollection that any more than four or five persons went in after you begun to put the powder in?

A. I think not. Immediately before, I think, they were taking out the goods.

Q. Did you see Col. Conwell, who has testified here?

A. No, sir: I did not to know him. We prepared these different places before we got the powder. But we could not get what we wanted to use. If, as soon as we got into a store and got ready, we could have placed the powder there, we could have accomplished all we started to do.

Q. I understood you to say, in answer to Mr. Healy (probably Mr. Allen), that the question of what buildings to blow up was under discussion; under discussion between whom? Were there any engineers with you there?

A. Capt. Green and the men who were engaged in blowing up. We would fix upon blowing such a building next, and it was done; each one attended to it.

Q. You say we fixed?

A. We finally passed it up by a line of men clear back to State street. After we had fixed upon the building, this was passed up to that point and put in.

Q. You say "we" fixed; who do you mean by "we?" did you have any other engineers with you besides engineer Green?

A. He had some one assisting him. Whether an engineer, or simply someone connected with the fire department, it would be difficult for me to tell.

Q. Did you, at any time after you began to consult about the blowing up, meet with three engineers?

A. The chief engineer did not come into our department that I know of until the Merchants' Exchange was on fire.

Q. Did you, at any time consult with any three of the engineers of the city after you started the scheme of blowing up?

A. I don't think we did. I had in my mind distinctly what to do, and I stuck to it until we got it done.

Q. You used your own discretion entirely?

A. I intended to. I intended to keep that line plumb up if I could, and not let it get into the new post-office building, and not get over into this part of the city.

Q. How effectual was the explosion of this building?

A. My impression is that it was not as efficient as some of the rest. I think it blew the stones out.

Q. And left the walls standing?

A. Left the walls standing, and did not blow them down. In fact, it was not desirable to do that on the front. It broke the rear walls, which we wished to do, threw the stories up and filled them with debris, and the fire burned upon the inside, which was a relief to us.

Q. At the time this was blown up, how near was the fire?

A. The fire was both sides of Devonshire street, following down across Federal street, below, and it was coming this way on a line nearly up to Morton place. I think, through there, down across Federal street. That was between 3 and 4 o'clock.

Q. If this building had not been blown up, could it have been saved from conflagration?

A. By no human possibility; it was not among the things that were possible.

TESTIMONY OF CHARLES H. HALL.

Q. You are a member of the firm of Armstrong & Co., and owner of the stock of goods.

A. Yes, sir.

Q. At the corner of Milk street and Devonshire street?

A. Yes, sir.

Q. Did you have a lease of those premises?

A. Yes, sir, for ten years.

Q. State what was your business.

A. Chromo-lithography.

Q. How many floors did you occupy in the building, in all?

A. We occupied the fourth and fifth, and part of the third for an office.

Q. What amount of stock had you in your store on the night of Nov. 9th?

A. Between $52,000 and $53,000.

Q. How recently had an account of stock been taken before the fire?

A. It was taken a week before the fire.

Q. That was the amount of it?

A. Yes, sir.

Q. State whether any considerable quantity had been sold during that time.

A. There had been nothing sold, because it was large orders, wholesale.

Q. Did you do a wholesale or a retail business?

A. Wholesale, only.

Q. On the night of the fire, did you go to your store?

A. I did.

Q. About what time?

A. Some time after twelve o clock, when I got down there. When I first went down, I went to a friend's of mine, on the corner of Franklin and Devonshire streets, and helped them until the fire reached them; then I went down to the store, to see whether everything was all right there. I did not think then the fire would reach there.

Q. When you reached your store, in what condition did you find it?

A. When I got there, everything was all right; some of the boys were there, beginning to pack up.

Q. Nothing had been removed then?

A. No, sir.

Q. What was done after you reached there?

A. We went to work to pack up goods, preparatory to moving.

Q. Did you remove any?

A. We removed a very few. We commenced moving them from upstairs down to the lower floor, preparatory to removing them from the building.

Q. So, instead of taking goods from the building, you packed them on the upper floor, and took them to the lower. ready to move them out?

A. Yes, sir.

Q. Did you have teams to move your goods?

A. We had teams to take them away, after we got them down.

Q. How many loads did you take away?

A. We didn't take away one whole load.

Q. You kept at work, packing and bringing down your goods, until when? What stopped you, if anything?

A. The first notice we had of anything was, some one came to the door and told us to leave the building, as they were going to blow it up.

Q. Do you know who it was?

A. No, sir.

Q. What was done then?

A. I was on the lower floor. I went to see what it was. Some one in the entry was hollering up-stairs, "Clear the building; we are going to blow it up." The boys were up-stairs, and I went up to have them all come down.

Q. State your best judgment as to how long it would have taken you to have removed your goods from the store, if you had not been driven out by the cry of "blow up the building"; that is, from the place where they then were when you received this notice. How long would it have taken you to substantially clear your store?

A. We hadn't got them all down.

Q. You had a part of them down?

A. Yes, sir.

Q. Take them just as they were, in the condition in which they were when this notice was given you, how long would it have taken you to have cleared your store then?

A. I think with the force we had there we could have got out all

we had there in a little over an hour, because if we used the elevator we could have got them all down.

Q. Will you say you had $50,000 of goods there?

A. The paper was the principal; then there were stones and machinery.

Q. What part of it was machinery?

A. I could not say exactly; I think there might have been — unless I looked at the account of stock that was taken I could not tell you — somewhere, I suppose, about $15,000; might be more or less.

Q. Who made that account of stock?

A. Our book-keeper; there was a little over $15,000.

Q. What kind of machinery?

A. Presses; steam-presses.

Q. Large presses?

A. Yes, sir.

Q. You think you could have removed them?

A. I don't think we could have removed them.

Q. Another part you say was the stones?

A. Those could have been very easily removed.

Q. Where were those?

A. Up stairs; they could be brought down on the elevator.

Q. Had you taken down any on that?

A. We had not, because we did not have it going.

Q. What proportion of it was in stones?

A. About $6,000 of stones; $6,500.

Q. How much in paper?

A. It was manufactured up in pictures. The rest would be paper as it was manufactured up into pictures.

Q. That would be $30,000?

A. I could not tell unless I looked it over.

Q. You say you had between $52,000 and $53,000 of property there, $15,000 of presses and $6,000 of stones, or a little more. That would be $30,000 or upwards for paper?

A. There is a little over $29,000 figured up in the list here. I suppose the odd cents or the odd dollars may make a difference; somewhere near $30,000.

Q. When that stock was taken, who took the articles?

A. The clerk; he and his son.

Q. Who fixed the prices?

A. I suppose he did, because he had it all to do himself.

Q. On what principle were these prices fixed?

A. What do you mean — that are carried out here?

Q. Whether they were at the price of the original cost?

A. At the original cost. On the stones, such work as had been done on them was put down; what had been put out on them was put down. If you will allow me, I can tell you why this is taken. He put it on a sort of buying in the concern; he took the account himself to see how much there was of stock.

Q. How many men had you employed in getting those goods down from your apartments?

A. I could not say exactly how many there were, but I should think there were ten or fifteen; might have been twenty.

TESTIMONY OF RUSSELL H. CONWELL.

Q. I want to know if you were in the vicinity of the corner of Milk and Devonshire street — that is, the building immediately opposite the upper corner of the new post office?

A. I was there several times during the night.

Q. Was that building blown up during the night?

A. Where the Equitable building now stands was blown up that night. I have not heard the testimony here, so I don't know what building is referred to.

Q. That is the building where the Equitable Insurance Company now has its building. You say that building was blown up?

A. I didn't see the explosion, but I was there a moment before and a very few minutes after.

Q. What was the condition of it the moment you left it? Was it standing?

A. Oh, yes, sir; certainly.

Q. What was the condition when you came back a moment afterward?

A. There were so many people and so much rubbish in the street I could not describe it. I have tried to describe and failed, and could not do it here.

Q. Was the building shattered?

A. The Devonshire side of it was very much shattered. I did not pass down farther than the corner of Milk and Devonshire.

Q. You say you left it a moment; did you hear an explosion?

A. I did.

Q. Where did you go?

A. I went back to Washington street, across Washington street into what I believe is the Milliken House passage way.

Q. You went back far enough to be out of danger?

A. Yes, sir.

Q. As soon as you heard the explosion, you rushed back again?

A. Yes, sir.

Q. Did you see any one officiating there, putting powder in or appearing to be managing affairs?

A. There was so many who appeared to be managing affairs I could not swear to any of them.

Q. Did you see any who appeared to be managing affairs?

A. I saw three or four.

The presiding judge erred, the plaintiff claims:

I.

When he ruled "that to render the city liable, the order for the destruction of buildings must be given by three engineers."

a. For it cut the plaintiff off from showing that no firewards were appointed in Boston, and that the other officers named in the statute gave the order.

b. It prevented the plaintiff from introducing evidence that all branches of the city government concurred in appropriating the property to public uses.

c. It was a substantial ruling that a majority of three engineers could not render the city liable by their act.

II.

When he ruled that the evidence, with all legitimate inferences, was not sufficient to go to the jury.

a. To show how the matter lay in the judge's mind, as he made his ruling upon the spur of the moment, we insert the full text of his ruling upon the sufficiency of the evidence (i. e., his ruling after plaintiff's evidence was in), as taken and copied by the stenographic reporter, who reported the evidence: —

COPY OF JUDGE LOWELL'S RULING.

THE COURT:—The defendants, as they have a right to do, demur to the plaintiff's evidence. If the court is applied to by such a demurrer, it is the duty of the judge to give that direction to the case which he finds warranted by the evidence.

The demurrer means that, granting all the evidence given by the plaintiff to be true, every word of it true, and drawing all the inferences that can be legitimately drawn in favor of the plaintiff's case, so far as that case depends upon circumstantial or inferential evidence, if taking it in that way the court is of the opinion *that no sufficient case has been made out to go to the jury*, the court must order a verdict for the defendant.

The first five counts of the case are framed upon the fourth and fifth sections of the General Statutes. The fourth section authorizes the firewards, or any three of them, to direct any house or building to be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire.

The next section says, if it is the means of stopping the fire, or if the fire stops before it comes to the same house or building, the owner shall be entitled to recover, etc., unless it is the building in which the fire first broke out.

The first question is, whether the firewards, or any three of them,

— whether there is any evidence to go to the jury that the firewards or any three of them present at a place in immediate danger from this fire, authorized the building at the corner of Milk street and Devonshire street to be demolished or blown up. That it was blown up there is undoubted evidence; so far as I know, uncontradicted evidence to go to the jury; but the question is, whether any three firewards authorized it in the sense of the law. It is admitted, or at all events it is ruled, for the purposes of this trial, that the firewards of Boston are the chief engineer and his assistants; and under the by-laws or ordinances of the city of Boston, any three firewards that concur in such an order as this, an order in such a case as this, must have the chief engineer as one of them. I don't know that the validity of that ordinance is in question. It is not very material in this case, because the chief engineer undoubtedly took part in whatever was done.

There is evidence from the chief engineer, that he, and two, at least, of the assistants met—more than two, I think—met at a certain place in Federal street, and there voted, as I understood it, to delegate the power of the firewards to the chief engineer, although it was not in writing, of course, — to delegate the power of the firewards to the chief engineer, he to consult, as I understand, with two of the assistants named, — Capt. Green and Capt. Smith. That may have been a useful and proper mode to obtain the opinion of all the engineers, and consult with them, but it does not seem to vary the aspect of the case at all, because any three firewards, designated or not designated, could, without any vote, authorize this to be done, and probably the vote was wholly immaterial. If the chief engineer and any two firewards had ordered it done afterwards, whether they were Captains Green and Smith or anybody else, undoubtedly it would have been a lawful order; for I take it, — I should say without any question — although I understand it has been so decided; I have not read the case — I should take it for granted that the firewards could not delegate such a power either to some other persons or to a number of their own board, unless that number is sufficient to act without such delegated authority.

MR. ALLEN:—We do not admit that the engineers are firewards. The statute is, that they are to act as firewards.

THE COURT:—I understand you were to reserve that point if you saw fit. I rule so. It is ruled for the purposes of this trial that the engineers have those powers in Boston. However, the ruling is utterly immaterial, because I do not understand there is any pretense or any ground for supposing that either the mayor and aldermen, or chief of the military officers—which means the militia of course, and not the United States officers—gave any such order. Therefore that ruling is immaterial. It must be the firewards.

MR. ALLEN: — We claim that the mayor of the city, with the aldermen present, Mr. Woolley being one, (and the testimony shows there were several there), did give the directions to Mr. Burt.

THE COURT: — There is no evidence that anybody but the mayor did.

MR. ALLEN: — The aldermen were present and did not dissent.

THE COURT: — There is evidence, undoubtedly, to go to the jury that the mayor authorized it, although he does not recollect it himself. On that part of the case there would be evidence to go to the jury, but I do not think there is any evidence to go to the jury that the mayor and aldermen, or any other persons present, did anything more, or the mayor did anything more than delegate his authority; there is no evidence that I recollect that the mayor or chief engineer or any one else did anything more than to delegate their authority.

MR. ALLEN: — The evidence of Gen. Burt was, that then and there, a reporter of the "Boston Herald" being present and taking it down, it was decided, in presence of the mayor and chief engineer and Engineer Green, that the buildings should be blown up on a certain line; and he took charge of a certain line, which was designated, and this store was upon it.

THE COURT: — The impression upon my mind is, that they agreed then and there to appoint certain persons to take charge of certrin districts, and, upon inquiry and upon examination, to do what might seem to them to be necessary, but that they did not then decide as to any particular building or any particular line of buildings. I cannot recall any evidence — of course something may have escaped me — I cannot recall any evidence which would authorize a verdict, taking all the inferences in favor of the plaintiff that either the chief engineer and two assistants, or the mayor and aldermen, or

any other of the officers named in that section of the statute, authorized the destruction of this building, or of any number of buildings of which this was one.

It is certainly unfortunate, — perhaps not to be wondered at, but certainly very unfortunate, — that it should be so; because, suppose the evidence would satisfy the jury that the destruction of this or some other building, the destruction of any of theproperty, — was injudicious, then it certainly leaves the parties in a very unfortunate position. The statute is carefully guarded. It provides for the fire reaching there or not; that is, whether there was really any necessity or not, as it turns out; whether it turns out to be necessary or not; for the fire reaching there and there being stopped; and for the fire never reaching there. It provides for all possible cases, except where the building would have been burned in any event. The statute, therefore, is carefully guarded; and if the whole city had been blown up injudiciously, — if it had been done regularly and with sufficient authority, — then the persons injured would have had their remedy. I think it is certainly very much to be regretted, perhaps not to be wondered at in the extraordinary state of excitement, in the extraordinary divergence of opinion, perhaps, which was developep on that occasion and in that emergency, that the forms of law should have been disregarded, or overlooked, or not fully carried out. I should myself infer, — I don't know that it is particularly important, — I should infer from the evidence that the persons present, most of them, supposed that either the mayor or chief engineer, either one or the other, or both, had the power. They seem to have gone to them as the source of power, and to have relied upon them, and to have taken their authority as sufficient. Both of those gentlemen say they did not give any authority; but as to one of them, it appears by the writing that he did. I mean to say, he says he gave certain papers; he does not think they were what they turned out to be, or he did not intend them to express as much as on their face they do express. I do not mean to doubt his entire frankness. Probably in his own mind he thought he could delegate his power, and perhaps had some thought that the persons to whom he delegated it would act with the assistance of two of the firewards. I

don't know that that point passed through his mind. I assume that to be so.

I have no idea that he could do that, and if those persons had consulted, each of them, with two firewards, it would have made the order a legal one; but it has no importance in this case, because none of them having anything to do with the destruction of this building did consult with two firewards. There is no evidence to go to the jury that they did, for it turns out without question now that the person who ordered the destruction was Gen. Burt. I think there is no evidence to go to the jury that Gen. Burt, or whoever else, — I assume it was he; that was the uncontradicted evidence: the other evidence is merely inferential; — I think there is no evidence to go to the jury that Gen. Burt was acting as an agent or servant authorized by the proper determination of any of the three persons, or two persons, in the absence of the three, named in that statute. I am very sorry to say so, but I consider it my judicial duty to say so.

The other question is, whether the persons who did destroy this building were assembled to the number of twelve or more, riotously or tumultuously; whether, being so assembled, they did destroy this property; and if so, whether the owner of it — I believe there was but one — has used all reasonable diligence to prevent its destruction or injury, and to procure the conviction of the offenders.

It just occurs to me, I don't know how the two counts can be joined; but it is none of my affair. One is contract, and the other is tort; and I suppose contract and tort cannot be joined. It used to be so, although if you have one action and are doubtful, you may put it either way. However, granting that the joinder is condoned by the defence, then the next question is, whether there is evidence to go to the jury that the destruction was by a riotous assembly.

There is no doubt, certainly, that there were a great many persons present in the streets, a great many persons present as spectators mainly. There were persons present, probably, at every part of the fire at which they were admitted to be present; and I suppose it is very safe to assume on the evidence, — and without evidence the jury would have a right to infer, — a great many different sorts of people were there present.

I do not, however, think there is any evidence that ought to be submitted to the jury that the persons there assembled, such as I have been speaking of, had anything to do with the destruction of this building. The real question is this, whether the trespasser — Gen. Burt undoubtedly was such — whether a person acting under a defective authority, but acting in the name and with the purpose of exercising a laudable authority, becomes a rioter under this statute, if in carrying out this trespass he finds himself in the presence of twelve or more persons. That seems to me to be virtually the question of law in this case.

I think there is hardly evidence to go to the jury since his examination, although possibly there might have been before, whether, at any time, in connection with the destruction of this building, there were twelve persons present who had anything to do with it. But in my own judgment the case goes beyond that. Although, of course, the defendant is entitled to every point that is fairly open to him; although he may argue, and I don't know but successfully, that there is not enough evidence to go to the jury that twelve persons were concerned together in the destruction, — I don't think there were myself, — still that is not the question now. The question is, whether there is any evidence for the jury that there were; and in my judgment, looking at this statement for the first time, if he had had twelve persons with him, doing and undertaking to do exactly what he did, — what on the uncontradicted evidence he did, — that is, undertook to carry out an authority which had the semblance of legality, which was probably intended to be legal, but was defective, whereby he became in law a trespasser, whether thereby he became a rioter under this act, he and his assistants, upon any evidence in this case, — I think on this there is not sufficient evidence to be submitted to the jury, that this act was done in such a way.

There has been some scintilla of evidence that some persons in the crowd were approving; but I think there is none to go to the jury that the approval, if there was any, had the slightest influence on the demolition of this building. I think, probably, the jury would find there was no such approval; but that is not the question. The approval or disapproval of the crowd, in my judgment, had nothing

to do whatever with the destruction of this building. It was predetermined; it was carefully planned.

Taking the precise case that is made by the plaintiff, taking the precise authority under which he acted, and the precise mode in which he acted, I don't think, in my judgment, that the plaintiff could have prosecuted him under this chapter; and I doubt whether there is any evidence that he ever undertook to, or made any inquiries to speak of until this case was brought, and he was instructed, of course, it would be necessary for his case to make such inquiries. I therefore think it is my duty to require the jury,—with the power I have,—to find a verdict for the defendants.

That saves the whole case to the Circuit Court, and ultimately to the Supreme Court of the United States, if they find I have been mistaken in the questions of law I have decided.

b. We also insert a copy of the opinion of Mr. Justice Clifford, and respectfully submit that in deciding that there is evidence of only one of the engineers directing the demolition of this building, he confounds the ministerial act of demolishing with the judicial act of adjudging the necessity, and places his decision upon narrow grounds, that in saying that "according to the testimony of Burt, he, said Burt, was assigned to the district where this building was situated, by the mayor and chief engineer. * * * * That Burt blew up this building with the concurrence of Green;" he leaves out the evidence that there was some one of the assistant engineers with Damrell, and some one with Green; that engineers were shown to have been officiating in blowing up this building, whom the evidence does not identify as either Green or his assistant; that he does not consider the fair inference that the powder was brought to this spot by Smith, as it came from the navy-yard, where we have seen Smith was despached for it at the time by the vote on Federal street; that he does not consider the fair inference that the ministerial act of blowing up was a strict execution of the judicial act at headquarters on Federal street, and that those participating other than engineers were a special force, in pursuance of the statute authorizing such special force; that he loses sight of the fact that,

with Damrell and an assistant engineer giving directions at the City Hall, Green with an assistant at the building, surrounded by a special force, and Smith procuring powder, we see the hand of each of the three, as well as of other engineers, manifest in the act of demolition; and, finally, we submit that the learned judge did not consider the statute which renders the act of a majority sufficient.

Circuit Court of the United States.

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 836.

ALEXANDER G BOWDITCH, ASSIGNEE, IN ERROR.

v.

THE CITY OF BOSTON.

OPINION OF THE COURT.

[MAY TERM, 1876.]

CLIFFORD, J.

Firewards, or any three of them, present at any place in immediate danger from a fire, and where no firewards are appointed, the selectmen or mayor and aldermen present, or in their absence two or more of the civil officers present, or in their absence, two or more of the chief military officers of the place present, may direct any house or building to be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire.

Gen. Stat., Mass., ch. 24, sec. 4, p. 177.

Whenever it is adjuged at any fire by any three or more of the engineers present, of whom the chief engineer, if present, shall be one, to be necessary, in order to prevent the further spreading of the fire, to pull down or otherwise demolish any building, the same may be done by their joint order.

Ords. of City, sec. 11, p. 237.

Damages are claimed by the plaintiff, as assignee in bankruptcy of the estate of Armstrong & Co., for the destruction of the stock of merchandise, fixtures, machinery and tools of the bankrupt, situate in a certain described building in said city, by the authorities of the city during the time of what is known as the great fire. Compensation for the alleged injury having been refused, the plaintiff, as such assignee, instituted the present action of tort to recover for the value of the property destroyed, the writ containing six counts. Four of the counts are founded upon the statute of the State, which provides that certain public officers may, under certain conditions, direct any house or building to be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire.

1. Count one alleges that the order to demolish the property was given by the mayor and aldermen.

2. Count two alleges that the order was given by three firewards of the city.

3. Count three, that it was given by two of the civil officers of the city.

4. Count four, that it was given by two of the chief military officers of the place.

5. Unlike those which precede it, count five claims to recover upon the ground that the property was taken for public use without just compensation.

6. Cities and towns are by the statute of the State made liable, in certain cases and under certain conditions, to persons whose property is injured or destroyed by persons engaged in a riot, and the sixth count of the writ is founded upon the eighth section of that statute.

Gen. Stat. ch. 164, p. 816.

Service was made and the corporation defendant appeared in the District Court, where the suit was was brought, and pleaded, the general issue denying every allegation of the several counts of the declaration. Subsequently the case came to trial, and the court at the close of the plaintiff's case, instructed the jury that the evidence

introduced by the plaintiff *was not sufficient to warrant the jury in finding a verdict in his favor*, and directed a verdict for the defendant, to which instruction the plaintiff then and there excepted. Judgment was accordingly rendered for the defendant, and the plaintiff sued out a writ of error and removed the cause into this court. Since the case was entered here the same has been fully argued, the error assigned being that the District Court erred in directing a verdict for the defendant. Instead of that, the proposition is, that, inasmuch as the evidence was in its nature legally admissible, its sufficiency to prove the issue was for the jury, and it was error in the presiding justice to withdraw it from their consideration. Authorities undoubtedly may be found in which it is held that it is necessary in all cases to leave the question to the jury if there is any evidence even *a scintilla* in support of the issue; but it is now well settled law that the question for the judge in such a case is not whether there is literally no evidence to support the issue, but whether there is none that ought reasonably to satisfy the jury that the fact sought to be proved is established.

Law. Rep., 4 Exch., 39.

Judges are no longer required to submit a case to the jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such a character that it would warrant a jury in finding a verdict in favor of that party.

Law Rep., 2 Privy Council Appeals, 335.

Most of the modern decisions are in accord with the views expressed in that case, and they show the rule to be that there is, or may be, in every case, before the question is left to the jury, a preliminary question for the judge, not whether there is literally *no evidence* to support the issue, but whether there is any upon which the jury can properly proceed to find a verdict for the party producing it, upon whom the burden of proof is imposed.

Jewell v. Parr, 13 C. B., 916; Toomey v. Railroad 3 C. B., N. S. 150; Wheaton v. Hardisty, 8 Ell. & Bl., 266; Schuchardt v. Allen, 1 Wall, 369; Merchants' Bank v. State Bank, 10 Wall., 637; Improvement Co. v. Munson, 14 Id., 448; Pleasants v. Fant. 22 Id., 120.

Apply that rule to the case before the court and it is clear that the ruling of the District Court was correct, unless the views of the plaintiff can be sustained in regard to the causes of action set forth in the fifth and sixth counts of the declaration. *Prima facie* a municipal corporation is not liable for the trespass or wrongful acts of their officers, but they may become liable under special circumstances, as where the act, if not wholly *ultra vires*, was expressly authorized by the governing body of the corporation, or where, without special authority, it was done by its officers in the scope of their duties or employment, and has been ratified by the corporation. Municipal corporations, or certain offices thereof, are sometimes appointed by charter or statute agents to judge of an emergency, and to perform or direct the performance of acts which a private individual would do at his peril. Acts authorized to be done to prevent the spreading of fire may be put as an example of the kind. Officers of such corporations are accordingly sometimes authorized to pull down or destroy buildings to stay the progress of fire; and such corporations are in certain cases and under certain conditions made liable by statute for the value of the property injured or destroyed for the purpose; but the liability of the municipal corporation in such a case is purely statutory, and never existed at common law. Hence, in order to recover for such a claim, the case must be clearly proved, and be fairly brought within the statutory provision. Consequently, it is decided, that where the statute allows such a recovery only when a building is demolished by the order of three firewards, a destruction of it by the order of one of those officers will create no liability against the corporation. Engineers in this State have the same authority in regard to the prevention and extinguishment of fires, and the performance of other offices and duties in respect thereto, as firewards; and the same rule applies in determining whether or not the corporation is liable for their acts.

Gen. Acts 1850, ch. 262, sec. 3; Gen. Stat., ch. 24, sec. 41, p. 181.

Claims of the kind, whether the property was injured or destroyed by the act of the firewards or engineers, must be brought strictly within the statute creating the liability, or the corporation will not

be held responsible. Statutes of the kind cannot be modified by a by-law, as for example, where the statute allowed such an order to be given by three firewards, and the by-law authorized one to exercise it in urgent cases, the Supreme Court of Massachusetts held that the by-law was void; that the injured party could not recover.

Coffin v. Nantucket, 5 Cush., 271.

In order to charge the corporation in such a case, the remedy being given only by statute, the case must be brought clearly within the true intent and meaning of the provision creating the liability.

Taylor v. Plymouth, 8 Met., 465.
Hafford v. New Bedford, 16 Gray, 302.

Houses or buildings situate at a place in immediate danger from a fire, may, by the order of three firewards, be pulled down or demolished when they judge the same to be necessary in order to prevent the spreading of the fire. Property within such a house or building, it may be admitted, is within the scope and meaning of the provision, and the succeeding section provides that the owner shall be entitled to recover a reasonable compensation from the city or town, if such pulling down or demolishing of the house or building was the means of stopping the fire, or if the fire stopped before it came to the same, unless the house or building pulled down or demolished was the one in which the fire first broke out, in which event the provision is that the owner shall receive no compensation. (Gen. Stat., chap. 24, sec. 5, p. 176.) Cities and towns are liable to that extent and under those conditions and not otherwise. Unless, therefore, the evidence offered by the plaintiff at the trial brings his case within those provisions, he cannot recover in this action. Such an action cannot be maintained unless it appears that the house or building was pulled down or demolished by the order of three firewards or three engineers, or by the joint order of some one of the other classes of officers named in the fourth section of that act.

Much discussion of that question is unnecessary, as it has already been decided by the Supreme Court of the State. "The plain intent of the statute is that no house or building shall be

demolished unless it shall be judged necessary by three firewards, or by the other officers authorized to act in their absence, or where no firewards have been appointed."

Ruggles v. Nantucket, 11 Cush., 436.

Nothing is left for construction since that decision in disposing of the cause of action set forth in the first four counts in this case, as the Court there say, "It is the united jndgment of the officers to whom the power is given, acting upon the immediate exigency and determining the necessity which is contemplated by the statute. Its language is capable of no other reasonable interpretation. It is a joint authority expressly given to the officers designated, acting together, and cannot be exercised by a minority or by any one of them," and the Court add what it is important to observe, that it is not sufficient that a general conclusion or judgment was arrived at by three firewards, or the other officers mentioned, that it was necessary to destroy some builings in order to put a stop to the further extension of a fire. They must go further. They must determine upon the particular house or building which they shall adjudge necessary to be destroyed for the purpose, as this cannot be left to the individual judgment of any one of the firewards. Federal courts in construing State statutes follow the decisions of the State, and in general regard the construction given to the statute by the State court as binding as the text.

Leffingwell v. Warren, 2 Black, 603.
Loring v. Marsh, 2 Cliff, 319.
McKeen v. Delaney, 5 Cr., 22.

Tested by these rules, it is very clear that the plaintiff failed to prove any right to recover under the first four counts of the writ. Evidence was given upon the subject, as for example, the chief engineer, Damrell, testified that at a meeting of three or four engineers with him, it was voted, if, in the judgment of the chief engineer, gunpowder could be used in any way to stay the conflagration, the board were ready to co-operate, but he states that it was contrary to their judgment that gunpowder was used. Two engineers, Green and Smith, were designated to act with the chief engineer, but he

testifies that he and his associates *did not designate* any building to be destroyed, and that they had not decided at that time to blow up any building. Persons subsequently met in consultation at the mayor's office, but three engineers were not present. Damrell was there and perhaps Green, but no others of that class of officers. According to the testimony of William L. Burt, he, said Burt, was assigned to the district where this building was situated, by the mayor and chief engineer, with authority to use gunpowder at his discretion, and it appears that Burt blew up the building with the concurrence of Green, but no other engineer ever assented to the act. All that is proved is that one engineer gave the order, which is clearly insufficient to support the action, the rule being that "three engineers must determine upon the particular house or building which they shall adjudge necessary to be destroyed for the purpose." In the case at bar the evidence fails to show any joint judgment of three firewards or engineers as to the necessity of destroying the building which contained the property, the value of which the plaintiff seeks to recover in this action.

2. Private property under the constitution of the State cannot be taken from the owner or be applied to public uses without his own consent, or that of the representative body of the people, and the provision is that whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor. (Gen. Stat., p. 17.) Viewed in any light the evidence had no tendency to show that the property destroyed was taken by the corporation for any use, public or private. Enough appears to show that the property was destroyed, but there is no evidence whatever that the order for its destruction was given by any one who had any authority to represent the corporation in that regard, which is all that need be said upon the subject.

3. Nor can the action be sustained under the sixth count, for the reason that the evidence introduced has no tendency whatever to show that the persons who destroyed it were engaged in a riot. Instead of that, the tendency of the evidence is to show that the order for the destruction of the building was given by William L. Burt, with the concurrence of one engineer, and it is not charged

even in argument that they were engaged in any riotous proceedings. Suffice it to say that the charge of riot is wholly unsupported by the evidence, and that there is no evidence in the case to support the sixth count of the writ which deserves any consideration.

Judgment of the District Court affirmed with costs.

This court, being in possession of all the evidence offered at the trial, except the appearance and conduct of the witnesses, are in the same position in reference to the case as the court below.

The primary questions, therefore, to be determined are:

I.

Whether upon all the evidence contained in the record, with all legal inferences therefrom, there is any evidence to go to the jury?

II.

If there is any such evidence, whether the ruling of the court, "that the evidence, with all the legitimate inferences which the jury might draw from it, was not sufficient to found a verdict upon for the plaintiff," as applied to such evidence, is correct as matter of law? (See copy of ruling of J. Lowell, *supra*.)

a. The plaintiff contends that it is error to direct a jury to find a verdict:

I.

Where there is evidence which tends to establish either the plaintiff's case or the defendant's defence.

McKonn et al. v. Craig et al., 39 Mo., 156.
Claflin et al. v. Rosenberg et al., 42 Mo., 439, 448.
Matthews v. St. Louis Grain Elevator Co., 50 Mo., 149.
Stephens v. Brooks, 2 Bush. (Ky.), 137, 140.
Bernhard v. Rensselear & Saratoga R. Co., 1 Abb. (N. Y.), Ap., Dec., 131.
Thurber v. Harlem B. M. & F. R. P. Co., 60 N. Y., 326.
Lewis v. Pratt, 48 Vt., 358.
Gaynor v. Old Colony & Newport R. Co , 100 Mass., 208.
Chaffee v. Boston & Lowell R. Co., 104 Mass., 108.
Mayo v. Boston & Maine R. Co., 104 Mass., 137.
Drakeley v. Gregg, 8 Wall., 242, 268.
Hickman v. Jones, 9 Wall., 197, 201.
Barney v. Schneider, 9 Wall., 248.
Life Insurance Co. v. Francisco, 17 Wall., 672.
Insurance Co. v. Baring, 20 Wall., 159.

II.

Where the evidence is of such a nature as to warrant the jury in making inferences of facts.

Cases *supra*.
Greenleaf on Evidence, 13th Ed., Sec. 49, page 61, and cases cited.
Barreda et al. v. Silsbee et al., 21 Horr. (U. S.), 146, 167.
Lamar v. Glawson, 38 Geo., 252.
Morris v. Hall, 41 Ala., 510.
Henry v Rich, 64 N. C., 379.
Brooks v. Somerville, 106 Mass., 271.

III.

And still more is it error, under conflicting testimony, to take the case from the jury and decide it for them.

Brooks v. Grand Trunk R. W. Co., 15 Mich., 332.
Kelsey v. Northern Light Oil Co. of N. Y., 45 N. Y., 505
Huddleston v. Lowell Machine Shop, 106 Mass., 282.
United States v. Tillotson and another, 12 Wheat., 180.

IV.

For, where there is evidence tending to establish the issue, or where inferences of facts may be made, or where there is conflicting evidence, the weight, effect, or sufficiency of such inferences and evidence are within the province of the jury exclusively.

Avery v. Clemons, 18 Conn., 306.
Peck v. Bacon, 18 Conn., 377.
Orne v. Cook, 31 Ill., 238.
Smith v. Gillett, 50 Ill., 290
West Gardiner v. Farmingdale, 36 Me., 252.
Sawyer v. Nicholls, 40 Me., 212.

a. And the strongest inferences are to be made against the party demurring to the evidence.

Miller, Use, &c. v. Insurance Co., 8 W. Va., 515.

V.

The defendant, by demurring to the evidence, admits, (for the evidence establishes it that), during the night of the 9th and morning of the 10th of November, 1872, a great and devastating fire raged in the city of Boston; that the plaintiff was the owner of the building in question, under a lease for a term of years, with goods, chattels and fixtures therein, all of the value of $52,000.00 or $53,000.00; that said fire did not first break out in said building; that said building was in immediate danger from said fire; that the emergency had arisen, and, "by a vote of" the engineers "present at a place in immediate danger of a fire, constituting sufficient authority under the statutes," it was in substantial form judged necessary that houses and buildings be pulled down or demolished by gunpowder, in order to prevent the spreading of the fire; that three of the engineers, with the chief at the head, were designated to act in this matter; that one of the three was immediately sent for powder; that the chief, and either Green or some other of the engineers, went to

the City Hall, and there obtained the assistance of discreet men, skilled in the use of gunpowder, in accordance with section 6 of the statutes and the ordinances of the city; that then and there the city was divided up into districts, and lines of defence marked out for the use of powder; that Gen. Burt, with Engineer Green and an assistant, took the street with Damrell's consent, which included the property in question; that then, or at some hour or more previous, the property in question had been taken possession of by one or more engineers, supported by a police force, for the purpose of mining the building; that the owner was present, with team and a large force, to remove the property, and could have removed it substantially all but for this interference, but he was driven, with his men, from the building; that said building was demolished by said Green, Burt and assistants, with the previous assent of said Damrell and an assistant; that all said personal property was destroyed; and that said act of demolition was the means of stopping the fire at that point.

There is direct and uncontradicted testimony, by three different witnesses, of three different engineers being present and participating in pulling down or demolishing the building in question.

John H. Coffin, page 46.

Q. "How many persons?"

A. "I saw there was one came in who had a badge on his hat that said 'Engineer' on it. There was another one behind him I should say was a fireman."

Rufus Brown, page 47.

Q. "Who was it that ordered you to go out?"

A. "I could not say who it was. My impression at the time was it was one of the engineers of the fire department, but I may be mistaken."

Wm. L. Burt, page 69.

Part of answer: — "I went into the building with the powder and fuse. I think Capt. Green was with me."

Page 70: — Q. "At the time Damrell wrote the order . . . at city hall, which of the engineers were present?

A. "There was only one. Mr. Damrell was present, and an assistant engineer. . . . Mr. Green I knew only by sight."

Page 72: — Q. "When this powder was brought in from the various places from which it came, in whose custody was it put?"

A. "They reported to me and to Capt. Green, who was there."

Page 72: — Q. "There was no indiscriminate mob blowing up?"

Part of answer: — "Nobody set a fuse in Boston that night who was not authorized to do it. Capt. Green had a fuse and I had one. There were only a few that had fuses at all."

Page 73: — Q. "You say 'we fixed.' Who do you mean by 'we'? Did you have any other engineers with you besides Engineer Green?"

A. "He had some one assisting him. Whether an engineer, or simply some one connected with the fire department, it would be difficult for me to tell."

There is no evidence which identifies the three engineers specified as one and the same engineer, but their descriptions are different; one by his general appearance and conduct, another by his badge, and a third, Capt. Green, by his name. It was for the jury to say whether there was one or three engineers aiding in pulling down or demolishing the building. Especially since it was night, a devastating fire raging, great confusion, a large and excited crowd hurrying to and fro, of whom ten or twelve were officers with badges (see Ordway's evidence, page 38), and none of whom were known by a regular police officer to be of the police force. All this evidence was admissible, relevant, and to some extent conflicting; but its weight, effect, or sufficiency was for the jury exclusively.

The presumption should be that these men were acting according to law, and hence that these several descriptions apply to different engineers, unless there is evidence to the contrary; for, unless in sufficient numbers, — three at least, — they were acting in violation of law, if the ruling of the court below is correct.

Besides these engineers who were performing the ministerial act upon the fire ground, Chief Engineer Damrell and an assistant, who

might or might not have been the one acting with Green, had assigned these men to this locality to use powder.

The engineers, in a body, had voted to blow up buildings. This act was done in pursuance of that end by those who supposed they had full authority, and it stopped the fire at that point. If it had not stopped the fire, there would be no claim. As it did, and probably saved millions of property, how could the designation have been better if made by all the engineers?

Both the eminent judges below substantially admit that there is abundant evidence that Damrell ordered the building to be destroyed. Judge Clifford says so in so many words, and Judge Lowell says there is evidence that "the mayor authorized it"; and we have seen that the mayor directed Damrell to write the order, and thereupon this street was assigned to Green and Burt. They did not consider the law making a majority sufficient, but if a third is necessary, we claim there is sufficient evidence of his participation.

The plaintiff further contends, however —

I.

That the ruling "that to render the city liable, the orders for the destruction of buildings must be given by three of the engineers" is erroneous. Because "words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or persons."

Gen. Sts. of Mass., ch. 3, § 7, cl. 3, page 51.

This act is held to apply to the exercise of powers and duties by a majority of commissioners.

Inhabitants of Plymouth v. County Commissioners of Plymouth, 16 Gray, 341–3.

By a majority of a Board of Water Commissioners.

Pearsons v. Ranlett, 110 Mass., 118, 125.

And by a majority of a Board of Railroad Commissioners.

Mayor and Aldermen of Worcester v. Railroad Commissioners, 118 Mass., 161, 174.

a. That none of the following cases have any application to the one before the Court; for, in two of them the buildings were pulled down or demolished by order of one fireward only, and in the other, not only was the order given and executed by but one fireward, but the plaintiff also was not the owner in either equity or law of the building.

Coffin v. Nantucket, 5 Cush., 269.
Ruggles v. Nantucket, 11 Cush., 433, 436-7.
Parsons v. Pettingill, 11 Allen, 507, 511.

The Court, however, admitted that the statute was binding as to construction.

METCALF, J. "It is not necessary, however, to decide this question at this time; for, assuming that the general law is thus altered, yet the ruling that the action could not be maintained, unless it should be shown that more than one of the general directors ordered the plaintiff's house to be destroyed, was clearly right, upon the evidence which was before the judge when the ruling was made."

Coffin v. the Inhabitants of Nantucket, 5 Cush., 272.

II.

That independently of the statutory direction as to construction a public body or number of public officials upon whom discretionary or *quasi* judicial powers are conferred, may, as matter of common law, act by a majority, and their action is binding and conclusive.

LD. KENYON, C. J. "In common understanding, what is required to be done by the churchwardens and overseers is satisfied by being done by a majority."

The King v. Beeston, 3 T. R., 592, 595.

PARKER, C. J. "The cases cited by the defendant's counsel sufficiently show, that a delegation of power to two or more must be executed by all to be effectual, unless it should appear that it was intended a majority should act. This, however, does not apply to the proceedings of public bodies, or their committees of inquiry, for

in these instances the usage has always been, and the common law is so in relation to corporations, that they are to act by a majority."

Damon v. Granby, 2 Pick., 345, 353.
Jones v. Andover, 9 Pick., 146, 150–151.
Baltimore Turnpike, 5 Binn., 481, 484–6.
Commissioners of Allegheny Co v. Leckey, 6 Serg. and Rw, 166, 170.
McCready and Another Trustees of Thomas v. Guardians of Poor, 9 Serg. and R., 94, 99.
Commonwealth *ex rel.* Hall v. Canal Commissioners, 9 Watts, 466, 470–1.
Walcott v. Town of Walcott, 19 Vt., 37, 39.

III.

That three or more firewards (or engineers) of the city, being present at a meeting in Federal street, a place in immediate danger from the fire, having their statutory duties in mind, considering the peril of the city, and voting to use gunpowder, fixes that in their judgment it was necessary to pull down or demolish buildings, and was a compliance with the Gen. Stats. of Mass., ch. 24, § 5, as to the existence of the necessity. That there afterwards, until other orders of the firewards, the designation and direction as to pulling down of any building in immediate danger from the fire, was a ministerial act capable of being delegated. For "they may also require assistance for pulling down or demolishing any house or building when they judge it necessary"; and "may direct the stations and operations . . . of all other persons for the purpose of extinguishing the fire." (Gen. Stats. of Mass., ch. 14, §§ 6–7, ordinance, *supra*.) If it is only the joint judgment of the firewards (engineers) as a public body that can "require assistance" and "direct the operations," the very object for which the powers are created, to wit: orderly and efficient extinguishing of fires, is defeated by encumbering the exercise of the powers

a. That the powers and duties of firewards are created and con-

ferred in Massachusetts by a general statute (Gen. Stats. of Mass., ch. 24), and the same, substantially, are conferred upon "the engineers or other officers of the fire department" of the city by the Acts of 1850, ch. 262, § 3. "The engineers or other officers," therefore, derive their powers and duties from the general statute, and it is *ultra vires* the defendant to add to, subtract from, or vary the powers and duties of "the engineers or other officers" as firewards by any ordinance or by-law.

Comyns' Dig., By Law, B. I., 5 Rep., 63 a.
The King v. Barber Surgeons, 1 Ld. Ray., 584, 585.
The King v. Miller, 6 T. R., 268, 277.
Haywood v. Mayor and Aldermen of Savannah, 12 Geo., 404.
Browne v. Holyhead Local Board, 32 L. J. Ex., 25.
Hall v. Nixon, L. R , 10 Q. B., 159.

It seems, therefore, that under the description "the engineers or other officers," is included the engineers, assistant engineers and firemen, and upon these are conferred all the powers and duties of firewards; especially all these officers are enumerated in the Acts of 1850, ch. 262, § 1, 2, 3.

The plaintiff further contends:

That the statute, Gen. Stats. of Mass., ch. 24, is remedial, in that it makes a cause of action possible, and gives a remedy where none existed at common law; therefore, "in advancement of the remedy, all is to be done that can be done in a way consistent with any construction of it," per Ld. Eldon in

Johnes v. Johnes, 8 Dorr 1, p. 15.

ALEXANDER, Ld. C. B.—"It is by no means unusual in construing a statute to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischief, where the statute is remedial."

Dean and Chapter of York v. Middleburgh, 2 Younge & Jerv., 196, 215.
Adm'x of Tracy v. Adm'r of Card, 2 Ohio, St. U. S., 431, 439-440.
The People v. Runkel, 9 Johns. R., 147.
State, Use of Sprigg v. Jones et al., 8 Md., 88.

The plaintiff further contends, that, having a lease-hold interest in the premises, he is the owner within the meaning of the statute, and may recover for such interest in the building, as well as for his personal property destroyed there.

J. Clifford's opinion, *supra*.
Mayor of New York vs. Lord, 17 Wend. 285.
S. C. with very exhaustive opinion, 18 Wend, 129.
Radcliffe vs. Eden, 1 Cowp. R. 485.
Hyde vs. Cogan, 2 Dougl. R. 699.
Wilmot vs. Horton, 2 Dougl. R. 720.

a. Especially since he might have removed the goods but for the defendant's order, a plea that the property would have been destroyed at all events would be no defense.

Bishop & Parsons vs. Mayor, etc. of Macon, 7 Geo. 200.
City of Richmond vs, Smith, 15 Wall. 429.

Revised Stats. of Mass. ch. 18, sec. 7, provided that "every owner of such house or building shall be entitled to recover reasonable compensation therefor," and so the statute stood until the commissioners who revised the statutes in 1860, changed the phraseology to its present form, viz:—"if the pulling down or demolishing such house or building is the means of stopping the fire, . . . the owner shall be entitled to recover a reasonable compensation."

This change of phraseology and the dropping the word "therefor" and the words "such house or building" after the word "owner," certainly make the Statute much broader, and must have been intended to extend the remedy to all parties whose property should be destroyed, and especially to all owners of the house or building.

The bankrupt, C. H. Hall, was the sole owner of the goods in the store, and of the lease. The name of Charles Armstrong, a former partner, was inserted in the declaration by mistake; he had

n interest in the property, and it was agreed before the trial that his name should be considered as stricken out of the declaration. And it was agreed in open court, after the other evidence was in, that the plaintiff need offer no further evidence of his exclusive ownership, but the short-hand reporter neglected to make a note of it. No question was made upon this point at the trial, and none will be by the city's counsel in this argument.

See J. Lowell's ruling, *supra*.

There is abundance of evidence that the demolition of the building in question stopped the fire at that point. The Legislature could hardly have intended to impose the condition that it should stop the spread of the fire in every direction, at all parts of the city.

See Burt's evidence, page 71.

Finally, if the plaintiff's property was demolished by the order of the city government of Boston, to stay a great public calamity which was hanging over the city, there can be little doubt that it amounts to a taking of private property for public use within the meaning of the constitutional provision.

Constitution of Mass., part 1st, Art. 10.
Constitution of U. S., Amendments Art. 5.
Mayor, &c., v. Lord, 17 and 18 Wend., *supra*.
Lawrence v. American Print Works, 1 Zabr. (N. J.) R. 248. S. C., 3 Zabr., 605.

The evidence in this case is ample to go to the jury at least that the mayor and aldermen, the chief engineer, and some of his assistants assented to the demolition of this property. The execution of it was entrusted to certain citizens of high judgment and respectability, accompanied by a police force of the civil officers of the city, and of some of these engineers.

It is difficult to see how there could be any more complete assent under such stirring circumstances.

There can be no right without a remedy, and there being no ques-

tion as to form of action or pleadings in this case, if the plaintiff can maintain his action upon any ground at law or in equity, the verdict ordered should be set aside.

The rulings at the outset, that the city could only be made liable by the action of three engineers shut out the evidence of the participation of other officials. This was error.

GEO. W. MORSE,

of Counsel for Plaintiff.

OFFICE SUPREME COURT U. S.
FILED
MAR 17 1880
D. W. MIDDLETON, Clerk

Supreme Court of the United States.

No. 210.

ALEXANDER G. BOWDITCH, ASSIGNEE, PLAINTIFF IN ERROR, *vs.* THE CITY OF BOSTON, DEFENDANT IN ERROR.

DEFENDANT'S BRIEF.

There is no evidence in the case which could justify a verdict for the plaintiff on either of the counts in the declaration.

The case is so fully stated in the opinion of the Circuit Court, from which the case is brought, that a more extended statement of the points of defence is not deemed necessary; and the undersigned respectfully refers to that opinion, in the printed record, pp. 75–79.

J. P. HEALY,
For Defendant in Error.